



# Consultation and engagement on a potential financial compensation/redress scheme for victims/survivors of abuse in care

## **Report 3: International perspectives – a descriptive summary**

September 2018



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## SUPPORT

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# INTRODUCTION

In January 2017, The Centre for Excellence for Looked After Children in Scotland (CELCIS), in partnership with the Scottish Human Rights Commission (SHRC) InterAction Action Plan Review Group<sup>1</sup> (Review Group), was commissioned by the Scottish Government<sup>2</sup> to take forward a consultation and engagement exercise on a potential financial compensation/redress scheme for individuals who experienced abuse in care in Scotland, as defined by the Terms of Reference of the Scottish Child Abuse Inquiry (SCAI)<sup>3</sup>.

The main purpose of the consultation and engagement exercise was to gather evidence:

- For the Scottish Government to consider when making its decision on whether to establish a financial compensation/redress scheme
- To inform the Review Group in its development of key recommendations for suggested next steps

The key focus was a national consultation with victims/survivors. From the outset, it included victim/survivor representation and used a collaborative approach to the development of the actual process of the consultation and engagement activity, as well as to questionnaire design. In addition, a review was undertaken of available information on financial compensation/redress schemes for victims/survivors of abuse in care that have been implemented around the world. Engagement work was also carried out with residential and foster care providers and other relevant professional groups to gather their initial, high-level views.

This report relates to the review of ten selected schemes around the world. It provides a brief overview of relevant information available on selected financial compensation/redress schemes that have been implemented around the world (see review methodology 1.6). This is one of a series of four reports:

- Report 1: Executive summary of the consultation with victim/survivors of abuse in care
- Report 2: Analysis and findings of the consultation of victims/survivors of abuse in care
- Report 3: International Perspectives – a descriptive summary
- Report 4: Initial perspectives from residential and foster care service providers and other relevant professional groups

In addition to the four reports, the Review Group has submitted a series of key recommendations to the Scottish Government. Details of these can be found in Report 1 and Report 2.

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<sup>1</sup> The Interaction Action Plan Review Group is a national stakeholder group. It includes representation from survivors, survivor support organisations, service providers, the Scottish Human Rights Commission (SHRC), the Scottish Government, CELCIS and Social Work Scotland. The Group monitors the implementation of the Action Plan on Justice for victims of historic abuse of children in care.

<sup>2</sup> See the Deputy First Minister's update to the Scottish Parliament on issues relating to the Child Abuse Inquiry in Scotland on 17 November 2016: <https://news.gov.scot/speeches-and-briefings/update-on-issues-relating-to-the-scottish-child-abuse-inquiry>.

<sup>3</sup> Terms of Reference for the SCAI. Retrieved from <https://www.childabuseinquiry.scot/about-us/terms-of-reference/>.

# 1 Aim of the review of financial compensation/redress schemes

1.1 The main aim of the review of financial compensation/redress schemes<sup>4</sup> in other countries was to gather descriptive information about established schemes elsewhere, under the following themes:

- Eligibility
- Information required to support applications
- Support for victims/survivors making an application
- Administration and decision making
- Types of payment, including approach to determining payment amounts
- The role of the Government and other relevant parties

1.2 The information gathered is intended to give Scotland the opportunity to benefit from experience gained elsewhere in the world. Throughout the development and delivery of the Scottish consultation for victims/survivors, the importance of having trust and confidence in any potential scheme was highlighted. The need for principles and processes to be in place to ensure that a scheme is fair, reasonable, credible, robust and consistent was emphasised.<sup>5</sup> Reflecting on the schemes that have been put in place elsewhere may provide valuable insights for Scotland.

1.3 This report presents a descriptive summary of information about the schemes. It provides a high-level summary and does not reflect the full range of evaluative and research material available, including academic research and work that offers insight into survivor experiences of particular schemes. Such a full, detailed and complex analysis was not within the scope of this paper, or a priority at this stage of a consultation and engagement exercise. A further, more detailed analysis, particularly of victims'/survivors' experiences, would be helpful to inform any future stages of a potential financial compensation/redress scheme in Scotland.

1.4 The information presented here should be viewed within the noted limitations and within the following context. All the schemes were highly individual in terms of their nature and the context in which they operated. Additionally, the information on which this paper is based comes from a range of different sources, including scheme documentation, government reviews and reports, academic reviews, and press reports. The availability of detailed information on the different schemes varies, and the extent to which the

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<sup>4</sup> The term 'scheme' is used throughout this report in a generic sense to refer to the schemes, programmes and settlement agreements established in different countries around the world. "Such [redress] schemes can range from a negotiated redress *package* or structured civil settlement with financial payments, benefits, services, and other outcomes, to a more pared back, government-stipulated redress *scheme* with payments, but perhaps few or no benefits, services, or other outcomes" Daly, K. (2014a). *Redressing Institutional Abuse of Children* (pp.116). New York: Palgrave Macmillan.

<sup>5</sup> Victims/survivors have highlighted these principles throughout the development and delivery of the victim/survivor consultation questionnaire: in partnership working with the InterAction Action Plan Review Group, the two pilot sessions with victims/survivors, and within the consultation responses.

information is directly comparable is not necessarily clear. For these reasons, the comprehensiveness of the information is variable and the scope for drawing direct comparisons may be limited. Nevertheless, this paper provides a broad overview of the ten schemes considered with regard to administrative issues, and offers some insights into the operation of financial compensation/redress schemes around the world.

1.5 The review gathered a wide range of information about the schemes identified, but this paper focuses on themes relevant to scheme structure and design which were also consulted on with victims/survivors in Scotland. These themes are detailed in paragraph 1.1.

## Review methodology

1.6 The review involved the identification of relevant financial compensation/redress schemes from around the world, and relevant documentation and literature related to each scheme. Work then involved the extraction of information relevant to agreed key themes from the identified sources (see paragraph 1.4). The review resulted in the production of an individual research summary paper for each selected scheme. This report draws from these individual summary papers. A full list of references is available in Appendix 2; and is presented on a scheme-by-scheme basis. For ease of readability, we refrained from including references within the main body of this summary report, with the exception of direct quotations.

## Selection of schemes

1.7 Initial work at the start of the review identified a number of financial compensation/redress schemes which have been established around the world. The earliest financial compensation/redress scheme identified was established in Canada in 1993, with subsequent schemes set up in other countries, including Australia, Belgium, Germany, Ireland, the Netherlands, New Zealand, Norway, States of Jersey, and Sweden. No two schemes are the same, and the scope for direct comparison is therefore somewhat limited. Each scheme identified for this review was established in a unique context, typically following some kind of inquiry or investigation into abuse in care. In different countries, the scope of abuse varied, the focus on care placements differed (some, for example, only focused on residential or institutional care), and some included particular populations (for example, indigenous populations and child migrants). Schemes have been established in specific social and historical contexts each have unique rules, eligibility criteria, and ways of working out and making payments. Schemes can be delivered by government, states, religious or charitable organisations. In recognition that a financial payment on its own will not meet individual victim/survivor needs, many schemes also incorporate other reparation elements, for example, an 'official' apology or acknowledgement, counselling, or health, vocational or educational benefits. Each country's health and social care provision, including how this is funded, may also influence some aspects.

1.8 This paper presents an overview of ten schemes. In view of the number of schemes identified and the differences between them, it was agreed that, given the scope of this paper, not all schemes identified could be - or indeed should be - reviewed in detail for this paper. The following rationale was used to determine the final selection of schemes included in this review:

- The selected schemes should have been implemented, and work should be either ongoing or concluded
- The selected schemes should have a significant country or state role, and not be run by a single religious or other group
- The final selection should cover a range of geographical areas – for example, UK, Europe and elsewhere
- The selected schemes should offer relevant evidence for the Scottish context – the German scheme identified, for example, was excluded, as there was very limited information available

1.9 Using the above principles for guidance, the schemes identified for full review were:

- Tasmania's Claims of Abuse in State Care Program (Tasmania)
- Queensland National Redress Scheme (Queensland)
- Redress Western Australia Scheme (WA)
- Western Australia Country High School Hostels ex-Gratia Scheme (CHSH)
- Republic of Ireland, Residential Institutions Redress (ROI)
- States of Jersey Redress Scheme (Jersey)
- Canada, Indian Residential Schools Settlement Agreement (IRSSA)
- Canada, Nova Scotia Compensation Program (NS)
- Canada, Grandview Agreement (Grandview)
- Swedish Redress Scheme (Sweden)

1.10 Consideration was given to the recent Savile scheme in the UK, as it used an individual assessment matrix for assessing historic claims of sexual abuse. This scheme was, however, distinct from the other schemes studied, as it focused on abuse by a single individual; it was not restricted to particular residential establishments and it was set up privately, rather than being established by government (national or local). For these reasons, the Savile scheme is not included in this review.

1.11 Similarly, a scheme in the UK involving Lambeth Council in London was established in January 2018<sup>6</sup>. As this scheme was not agreed in the original scope of this review project, and its recent establishment limited the availability and value of information, the Lambeth scheme was not included in the review.<sup>7</sup>

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<sup>6</sup> See <https://www.lambeth.gov.uk/redress> for further details on the Lambeth scheme.

<sup>7</sup> The full list of schemes identified in initial scoping work but not included in this full review is as follows: Belgium, Germany, the Netherlands, New Zealand, Norway, Northern Ireland, and Australian Royal Commission.



## Preparation of research papers

1.12 Individual research summary papers were prepared for each scheme included within the review. These papers draw on publicly available information identified via internet searches, recommendations and reference lists. Information sources included websites, scheme documentation, government and other official statements, papers and reports, academic literature, and press/media reports. For each scheme, information was gathered from identified sources, guided by a set of themes and sub-themes which aligned with the themes addressed in the consultation work with victims/survivors in Scotland.

## Descriptive summary

1.13 This descriptive summary draws on the individual research papers of each scheme, and presents an overview of the ten selected schemes with regard to the following key themes: scheme origins and remits; eligibility; information required to support applications; choice of support for victims/survivors making an application; administration and decision-making; types of payments, including approach to determining payment amounts; and the role of the Government and others.

1.14 While significant efforts were made in gathering information on the individual schemes, this was a time-limited exercise based on a search of publicly available information and there are important limitations to note in considering the information presented here. As noted, each scheme is very individual and has been developed in a particular social and historical context. Direct comparisons are, therefore, difficult. A broad range of sources has been used and information gaps are noted at various points in the paper.<sup>8</sup> For these reasons, the information presented here should be viewed in this context.

1.15 Appendix 1 of the report provides summary overview tables on each of the individual schemes.

1.16 The sources of information referred to within this report are listed in Appendix 2.

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<sup>8</sup>. These information gaps indicate that the information on a particular topic was not identified in the review. It does not, however, follow that the scheme did not cover the issue in question

## 2 ELIGIBILITY

2.1 All schemes have to define who is eligible to apply for financial compensation/redress. Any potential financial compensation/redress scheme in Scotland would be open to all victims/survivors of abuse in care as defined by the Terms of Reference of the Scottish Child Abuse Inquiry<sup>9</sup>. Within this broad definition, eligibility to apply for financial compensation/redress would still need to be formally specified.

2.2 The eligibility criteria of individual schemes around the world largely depends on the origins and purpose of each scheme. Who was eligible, the time period covered, the type of care settings and the types of abuse to be included in each scheme were all shaped by the circumstances in which the original abuse took place, the way in which it was identified, and the relevant inquiries or investigations which led to the establishment of the schemes. Eligibility for financial compensation/redress was typically restricted to specific groups of individuals using a combination of the following criteria:

- Victims/survivors who had been in care in nationwide, state/regional establishments, or in specific named establishments – schemes often specified residential care and/or specifically excluded foster care
- Victims/survivors in care over a particular time period.
- Victims/survivors who had suffered particular types of abuse, or a combination of different types of abuse, for example: sexual abuse, physical abuse, neglect, or emotional abuse
- Location and perpetrators of abuse; broadly speaking, the abuse had to have taken place on the premises of the agency concerned, and the abusers had to be employees of the agency; some schemes, however, made provision for abuse by other residents, abuse that took place in other settings, or abuse at the hands of other visiting personnel
- Severity of abuse; of the schemes included in this review, the Swedish scheme, perhaps, offered the most restrictive criteria – abuse had to be considered 'severe', as defined by the scheme, and 'neglect' was specifically excluded from the scheme

2.3 Three other factors relating to eligibility were identified in some of the schemes: whether applications can be made by relatives/next of kin of deceased victims/survivors; whether any priority groups were identified within scheme criteria; and how other routes available to victims/survivors for making claims and payments in respect of abuse suffered were taken into account. Each of these factors was included in the victim/survivor consultation questionnaire, and available information on how these issues were dealt with by other schemes is described in this report.

2.4 Information on the **eligibility of relatives/next-of-kin of deceased victims/survivors** to receive payments from schemes was identified for seven

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<sup>9</sup> Terms of Reference for the SCAI: <https://www.childabuseinquiry.scot/about-us/terms-of-reference/>

of the schemes. In five of the schemes, eligible relatives or estates of deceased victims/survivors were able to apply for and/or receive payment as follows:

- Death prior to submission of an application: in two cases - ROI and IRSSA – eligible relatives of a deceased victim/survivor were able to make an application *in their own right* if the individual had died after a specific date. For ROI this was May 1999 (corresponding with the announcement of the inquiry that led to the establishment of the scheme, roughly three and a half years prior to the scheme commencement); for IRSSA this was May 2005 (corresponding with the day the agreement negotiations were initiated, two and a quarter years prior to the scheme commencement). Note that, in the case of IRSSA, this eligibility appears to be restricted to a Common Experience Payment (see Chapter 6 for explanation of IRSSA payment structure)
- Death following submission of an application: in three cases – ROI, WA and IRSSA – eligibility for financial compensation/redress was extended to eligible relatives if a victim/survivor died following submission of an application. In the ROI scheme the spouse or children could proceed with applications already made. In the IRSSA scheme, eligible relatives (estates of deceased victims/survivors) could receive full Common Experience Payments and could proceed with applications for Individual Assessed Payments, dependent on sufficient evidence being available. In the case of the WA scheme, a payment of up to \$5,000 could be made, and was often paid in the form of funeral expenses – this provision was introduced after a review of the original scheme. In addition, the Queensland scheme also made provision for *discretionary* payment of funeral costs if an applicant died prior to the conclusion of their case
- Death following agreement of award: in three cases - Queensland, WA and Sweden - awards which had already been agreed could be paid to the estate of an applicant who died prior to payment being made

2.5 In addition, available information indicates that the next-of-kin/relatives (or estate of deceased victims/survivors) of victims/survivors were **not** eligible to apply for payment in the CHSH scheme, and that the Jersey scheme did **not** award financial compensation/redress if the victim/survivor had died.

2.6 The inclusion of **priority groups** was identified in four schemes (Queensland, WA, CHSH and ROI), along with information, in some cases, on related eligibility for interim payments. In all cases, these related to age, infirmity and/or terminal illness, as follows:

- Queensland: victims/survivors over 70 and those with life-threatening illnesses were treated as priority groups when receiving their level one payment. There was no special interim payment for this priority group, and all applicants (priority and non-priority) could opt to receive their Level 1 payment while their Level 2 payment was being considered.

- WA: victims/survivors with terminal illnesses or likely to die before 30 June 2011 were treated as priority groups, and were eligible for an interim payment up to a maximum \$10,000 (deducted from final award)
- CHSH: Victims/survivors with terminal or life-threatening illnesses were treated as priority groups (information on interim payments was not found)
- ROI: Victims/survivors with a medical illness or psychiatric condition which is life-threatening, and those over 70 years of age, were treated as priority groups and were eligible for an interim payment up to a maximum €10,000 (deducted from final award). At the beginning of the process, this applied to applicants who were born before 1 January 1934; thereafter, all applications were reviewed on an ongoing basis and, once an applicant reached the age of 70 years, their application was automatically granted priority.

2.7 There were two examples identified of a different approach being adopted, both of which highlight the importance of viewing priority groups within the broader context and origin of the scheme:

- The NS scheme, as well as being, in effect, an alternative dispute resolution process<sup>10</sup>, had an active investigation strand. As such, claims naming currently employed individuals as perpetrators of abuse were treated as priority cases
- The IRSSA scheme, in effect a class action settlement<sup>11</sup>, identified criteria for eligibility to an 'Advance Payment Program'. This was established in advance of the main scheme becoming operational. As such, the Program did not provide an interim payment from the main scheme, but offered a fixed rate payment of \$8,000 'for any eligible applicant of 65 years of age or older', which was subsequently deducted from future payments from the main scheme

2.8 In determining eligibility, schemes took a range of different approaches when taking account of **other routes available to victims/survivors** in making claims and receiving payments. (This issue is also relevant to the calculation and acceptance of payments, and is discussed further in Chapter 6).

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<sup>10</sup> Alternative Dispute Resolution (ADR) is the procedure for settling disputes without litigation, such as arbitration, mediation, or negotiation.

<sup>11</sup> A "class action" lawsuit is one in which a group of people with the same or similar injuries caused by the same product or action sue the defendant as a group. The Indian residential schools settlement was approved by the Courts, and former students and their families were given the choice to stay in the settlement or opt out. This was the largest class action settlement in Canadian history.

- Some schemes required applicants to give up the right to take further legal action against the government/state - Tasmania, Queensland, ROI, Jersey, IRSSA and NS (although the continuing right to take action against an *individual* employee was noted in the case of NS)
- Some schemes (WA, CHSH, NS, Grandview and Sweden) allowed applications from those who had already taken action and received payments (civil or criminal) in respect of abuse suffered, but in some cases (WA and CHSH) took account of any sums already received in making a financial compensation/redress payment. The IRSSA scheme allowed all former residents to apply for a common experience payment, but disallowed those who had received a previous court or alternative dispute resolution (ADR) payment from applying for an individual assessment process payment. The Grandview scheme required applicants to provide details of any previous claims, although it was not clear from the available information how this was taken into account
- Some schemes (ROI and Jersey) did not allow applications if individuals had already pursued a civil claim and received payment

### 3 INFORMATION REQUIRED TO SUPPORT APPLICATIONS

3.1 Any financial compensation/redress scheme established in Scotland would need to specify the information required to submit and support an application. Such information would need to (i) show that the applicant met the basic eligibility criteria for the scheme, and (ii) provide sufficient detail to allow a decision to be made about the level of payment to be awarded (depending on how the payment system was structured).

3.2 This review gathered details on how different schemes approached this issue, and this is summarised in the sections below. The following general points should be noted:

- The type of information required to support applications is often dependent on the purpose and context of the scheme, for example, it may be integrated into an inquiry, investigation or established as a separate process
- The nature of the abuse suffered by victims/survivors and covered by financial compensation/redress schemes means that written information may not always be readily available. Individual applicants may not have the information necessary to support their case or may not know how to access it. Records may also have been lost or destroyed. Additionally, the abuse may not have been reported or officially recorded. Different schemes take account of this situation in different ways, for example by assisting applicants in locating necessary information, by applying different levels of scrutiny to the information provided, or by allowing oral evidence in support of applications
- In some cases, different levels of information were required for different categories or levels of payment within the same scheme, from a more basic assessment and standard payment to a more complex and individually assessed payment
- Some schemes evolved over time in response to experience, and the information required to support applications changed – in some cases requirements became more stringent while in others they become less so

3.3 The sections below provide a summary of the information required to support applications for financial compensation/redress across the different schemes, and the processes related to the submission and acceptance of information. Information obtained from our review of each scheme is presented against the following headings:

- Initial application – the information required
- Additional information
- Available assistance

- The use of oral evidence and hearings
- The roles of different parties
- Other issues relating to information requirements

3.4 Table 3.1 presents a brief description of the information requirements and processes for individual schemes.

## Initial application – the information required

3.5 Typically, schemes required applicants to complete a form providing their personal details, details of their legal representative (where appropriate), details of their time spent in care (for example dates and locations), and written details of abuse and/or harm suffered, sometimes in the form of a signed and witnessed declaration. Proof of identification was commonly required. Various schemes also required combinations of the following: submission of supporting documentation (for example, medical reports) or details of efforts to obtain such information, witness statements; permission for relevant records to be accessed; details of additional information that needed to be sourced; permission for police checks to be carried out; information on previous claims, police reports or criminal proceedings, and related payments with respect to abuse in care; details of payment sought; confirmation of seeking legal advice (where this was a condition of using the scheme).

3.6 Although it seems that most schemes required the completion of a standard application form, which might be accompanied by additional written submissions or documents, this was not the case for all schemes. In particular, the Tasmania scheme did not appear to use a standard application form, although a 'pro-forma' to capture the relevant information provided by applicants was developed over time.

3.7 It was also common for applications to involve agreement to scheme conditions. In some cases, this involved agreement with specific points, such as:

- Tasmania: Applicants had to give permission for a police check
- Grandview: Applicants for individual benefits had to agree to release the Government from future liability and confirm that they had sought legal advice
- Jersey: Applicants had to grant access to all relevant records, agree to their information being shared with a psychiatrist and to meeting with a psychiatrist if required, and agree to cooperate fully with the scheme lawyers

## Additional information

3.8 In addition to the information submitted by individual victims/survivors, most schemes also used additional information to verify or assess claims (verification processes are covered more fully in Chapter 4). In most cases, schemes accessed official records of various types in order to verify the basic information provided by the applicant. Most often, this included records relating

to the individual's time in care, but in some cases also included medical records, educational records and police records.

3.9 Some schemes, however, took a broader, more investigative role in requesting or obtaining further information. For example, the Tasmanian scheme sought out other information that might support a claim; the ROI scheme involved the Board obtaining any other necessary information needed to assess a claim, including evidence from named individuals and establishments; the Jersey scheme included the possibility of referring the applicant for a psychiatric assessment; the IRSSA scheme involved the gathering of background information on named individuals and establishments and the option of requesting expert reports; and the NS scheme included the potential of an additional statement being required by the Internal Investigation Unit (this provision was not originally included, but was added in Phase 3 of the scheme). In several cases (for example, Tasmania, ROI and IRSSA), this additional information was required in connection with an interview or hearing which formed part of the financial compensation/redress application process.

### Available assistance

3.10 There was some evidence of schemes providing guidance or assistance to victims/survivors in securing the information they needed to make or progress an application. For example, the Tasmania scheme used trained interviewers to get full information from applicants; the WA scheme used a telephone call with applicants to discuss any further information required for a claim to be assessed; the ROI scheme allowed applicants to specify information that they wanted the Board to source; the Swedish scheme provided assistance to applicants in securing the required official documents; and the Jersey scheme involved an initial assessment, after which applicants were advised of any additional information that needed to be submitted.

### The use of oral evidence and hearings

3.11 Some schemes used oral, as well as written information, with the process of this varying across schemes. Some schemes such as Jersey, Queensland, WA and CHSH appear to have been 'paper-based', although the CHSH scheme involved an informal telephone interview following initial application. Other schemes, however, incorporated hearings or interviews, with this process appearing to fulfil different purposes:

- In some cases, hearings or interviews were seen as an important part of the process for victims/survivors. In the Grandview scheme, applicants who were entitled to individual benefits were entitled to a hearing with an adjudicator, and hearings were seen as an opportunity for individuals to have their voice heard; in Tasmania, interviews with trained interviewers were designed to help individuals share their



experience. An initial entitlement to a hearing within the NS scheme was, however, removed in later phases of the scheme

- In some cases, such as the preliminary hearings which formed part of the IRSSA process, hearings provided an opportunity for the scheme to obtain fuller or further information about the claim
- In some cases, including the ROI and IRSSA schemes, hearings involved different parties, oral testimony, and the questioning of parties and witnesses, and had a focus on establishing the facts in a case
- Some schemes used hearings and oral evidence in particular circumstances, for example, for more complex cases (IRSSA), for cases that could not be resolved on the basis of written submissions and available records (IRSSA), and for cases in which an initial payment offer was rejected (ROI). The Swedish scheme involved a hearing, although this part of the process could be dispensed with in individual cases if indisputable medical evidence was available

3.12 The role of hearings in the decision-making process is also considered in Chapter 5.

## Roles of different parties

3.13 In most cases, schemes were responsible for accessing official/personal records and information for verifying applications submitted by victims/survivors. The Swedish scheme appeared to be an exception to this, in that applicants were responsible for proving their time in care, although they were provided with assistance in accessing the required archive records to do this.

3.14 There were different approaches to obtaining information relating to more detailed assessment of claims, for example, the ROI scheme was responsible for gathering any information required (for example, from named individuals or institutions), while in the IRSSA scheme applicants were responsible for collecting and submitting any information they wished to rely on, and all parties involved in hearings were responsible for preparing witness statements in support of their case.

## Other issues relating to information requirements

3.15 Two other issues relevant to information requirements were identified as follows:

3.16

- There was evidence that **some schemes amended their information and evidence requirements over time**. In some cases, processes became more stringent, for example, the NS scheme tightened up requirements to provide medical records and introduced a provision for a further statement to the Internal Investigation Unit in later phases; optional polygraph tests were also introduced. In other cases, scheme requirements reduced over time – the WA scheme dropped an initial requirement for a psychological assessment for maximum payment claims.
- Information on individual schemes indicated **potential problems encountered in relation to meeting information requirements**, which may have to be taken into account when designing a scheme. Some of these are touched on above, but, in summary, these included:
  - The historic nature of the abuse, the absence of records relating to care systems from several decades ago, and the problems of relying on the memories of applicants.
  - The hidden nature of the abuse, which meant that incidents may never have been reported, recorded or investigated.
  - The vulnerable nature of victims/survivors, and their personal difficulties in dealing with the bureaucracy related to making applications.

Table 3.1: INFORMATION REQUIRED TO SUPPORT APPLICATIONS

Scheme	Information required to support applications
Tasmania	The information required varied across all four rounds (see summary table on page 50 for further details on the four rounds). At round one, only basic information was required: personal details (full name, previous names and date of birth), the nature of the claim and placement details, whether the claimant was prepared to be interviewed, and their preferred method of contact. Whereas by round four, applications required contact details, information on time spent in care and description of abuse. Applicants also had to provide confirmation of identity, a signed and witnessed declaration, and agree to a police check of prior convictions. Information provided by applicants and eligibility for the scheme were verified using official information and records. Further information that might support the claim was sought as required. Interviews were then carried out by trained interviewers, allowing applicants to provide face-to-face testimony; interviews were recorded and sealed. Applicants were given the opportunity to access their records.
Queensland	Applications included a signed declaration of the abuse or neglect experienced, and acceptance of the terms of the scheme. A search of departmental records and other available information was undertaken to verify the applicant's placement in an eligible institution; in the case of privately placed children, confirmation would depend on the verifications released by care providers.
WA	The application form included a statement of abuse or neglect, and confirmation and certified proof of identity. Applicants' statements were acknowledged as their personal experience in state care unless there was evidence to the contrary. Scheme administrators accessed various records and sources of information to substantiate details of the applicant's placement and the abuse and/or neglect. An original requirement for applicants receiving the maximum payment to have a psychological assessment to support their application was removed part way through the scheme.
CHSH	The application form included personal details, placement details, description of abuse, and confirmation of whether abuse had been reported to police. Applicants were also required to submit certified proof of identity and any documents, where possible, that verified their placement. All applicants were contacted by telephone prior to their claims being assessed to discuss if any further information was required. Applicants' residence in state care was verified via official records, but applicants were not disadvantaged if proof could not be found.
ROI	The application form included personal details and proof of identity, solicitor details, history of care experience and details of abuse, along with supporting medical information; applicants were also required to provide information on previous reports to the police, civil claims, and payments received. Applicants could ask the Board to source information. The Board could source any further information necessary to make a decision. Named individuals/institutions were asked to provide evidence (and were given a copy of the application). A hearing was

Scheme	Information required to support applications
	held if the settlement offered by the Board was rejected. Applicants could give evidence, call witnesses, and question witnesses. Any named person or institution could take part in a hearing.
Jersey	Applicants had to provide personal details and proof of identity, representative contact details, details of care experience and abuse suffered, and details of previous complaints, criminal proceedings, civil claims and payments received. Applicants also had to sign a declaration of truthfulness, and agree to (i) granting access to relevant records and information, (ii) the sharing of information with relevant agencies, and with a psychiatrist, (iii) a psychiatric assessment, if required, and (iv) co-operation with the scheme lawyers.
IRSSA	Common Experience Payment (CEP) and Independent Assessment Process (IAP) applications involved two different processes. Applicants had to complete an application form and the scheme could contact individuals for more information if required. IAP applications required to be supported by documents from claimants and defendants, and scheme adjudicators could also call for expert reports. The scheme sourced relevant background information on establishments and named individuals. Claimants and other parties were responsible for collecting information, and for organising witnesses and witness statements submitted prior to hearings. Hearings involved presentation of evidence, expert reports, witnesses and questioning of witnesses.
NS	Applicants had to provide details of the abuse experienced and details of the payment sought, with basic details confirmed via employment and residency records provided by Internal Investigation Unit (provision for requesting a further statement to the scheme was introduced in Phase 3 of the scheme). During the first and second phase of the scheme, applicants had the option to appear personally or by videotape, audiotape or telephone before the file reviewer. This option was subsequently removed for the majority of cases. After Phase 1, voluntary polygraph tests were introduced for accused employees and claimants.
Grandview	Entitlement to group benefits (for example, access to a crisis line, tattoo removal/scar reduction, and general acknowledgement (see overview summary table on page 66 for full details of other elements of reparation and redress) was based on proof that the applicant was resident at Grandview during the specified time period. Group benefits are unique to this scheme as these benefits were available to all former residents of Grandview without the need for also applying for the individual benefits and going through its validation process. The application form for individual benefits required a description of abuse and injuries suffered, along with Crown ward files (accessed on behalf of the applicant), transcripts of police interviews and other supporting evidence. Applicants had to provide a sworn statement of the truth and a statement releasing the state from further liability, and declaration of receiving independent legal advice. Applicants were entitled to an oral hearing before an adjudicator. Hearings were held at locations suitable for the applicant, lasting around half a day. Applicants could have legal representation at hearings.

Scheme	Information required to support applications
Sweden	<p>Application forms were accompanied by a written submission, and any available records (accessed with support of the Financial Redress Board (FRB)). Archival material was used to validate the applicants' eligibility and their pathway through care, and to identify indisputable medical evidence or police records/court decisions that would make a formal hearing unnecessary. The application was followed by a formal hearing at which the FRB could ask questions of the claimant. Oral testimony could be provided in person, by audio, or by video, and claimants could summon witnesses (with witness expenses borne by claimants if the FRB did not consider the inclusion of the witness relevant).</p>

## 4 DECISION MAKING

4.1 The consultation paper for victims/survivors stated that 'it is important for victims/survivors to have confidence and trust in the process, and to make sure Scotland has a fair, reasonable, credible, robust and consistent scheme'. This will apply across the entirety of any scheme, but it is particularly critical that any decision-making aspects of a scheme stand up to scrutiny.

4.2 The review of international schemes gathered information on decision making and the different people involved at different stages of the processes. A brief description of the relevant processes in each scheme reviewed is presented in Table 5.1 with key points and themes highlighted.

4.3 It should be noted that the information available for various schemes suggested that there was not always a clear-cut distinction between stages in decision-making processes.

### Overview of decision-making processes

4.4 Although all schemes varied, decision making typically involved three broad stages:

- Initial verification of eligibility based on basic information provided by applicants and supplemented by information obtained from official records
- Investigation and assessment of the nature, extent and severity of abuse and its impact (the extent to which applicants were required to 'prove' claims, via presentation of evidence (written and oral), at interviews and hearings which formed part of this stage varied)
- Determination of award. There were differences across schemes in the extent to which these stages were dealt with by different people and in how such decisions were made

4.5 Scheme administration and decision making generally involved a mix of internal staff assessment and decision making (usually in relation to early stages in the processes), and independent or 'expert' assessments of claims and awards.

4.6 Some schemes used different processes for different 'levels' or 'types' of claims. For example, the WA scheme dealt with Level 1 and 2 cases separately to Level 3 and 4 cases (with the levels reflecting severity of the case as determined by an initial assessment), the Queensland scheme made a distinction between Level 1 and Level 2 claims, while the IRSSA scheme operated different processes for CEP (common experience payment) and IAP (independent assessment process) cases.

## Verification

4.7 Schemes generally included a process for verifying the initial information submitted by applicants in order to make a decision about scheme eligibility – at its most basic level, this involved referring to official (or institutional) records to confirm the broad facts presented in applications (for example dates relating to time spent in care). However, schemes took different approaches to the extent to which information needed to be verified. For example, information available on two related schemes – WA and CHSH – indicated a presumption in favour of accepting applications submitted by applicants, in that statements made were accepted as personal experience unless there was evidence to the contrary, and applicants were not disadvantaged if evidence of care could not be found. Similarly, the Queensland scheme accepted the information provided as per the applicant's self-disclosure for Level 1 payments, but adopted a more rigorous assessment process for Level 2 payments. In the case of NS, there was evidence that an initial process of minimal verification was tightened up, resulting in one requiring proof 'on the balance of probability' (see 5.14 below).

4.8 Those involved in the verification process varied, but included assessors, adjudicators, scheme lawyers, panels and boards. This reflected the design of individual schemes.

## Assessment

4.9 The approach to assessing claims was unique to each scheme, with processes varying considerably in detail. Essentially, schemes used documentary evidence, personal statements or testimony, official records and, in some cases, oral evidence at hearings to establish the nature and severity of the abuse suffered by an individual (see also 3.12, for information on the use of oral evidence). This assessment then formed the basis for determining a payment offer.

## Determination of financial award

4.10 Most schemes used a matrix or tariff table to determine financial awards – these took account of factors related to the individual's experience of out of home care; the nature, severity and frequency of the abuse suffered; and the short and long-term impact of the abuse. In some schemes, payments comprised a number of different elements, including standard (flat rate) payments, and other forms of redress (see Chapter 6 for further information on types of payments and determination of awards). The Swedish scheme was unique in this review for offering an award which consisted solely of a flat rate payment.

## Key personnel in decision making

4.11 As well as administrative staff within schemes, assessment of and decision making about claims involved:

- Lawyers with relevant experience and appropriate seniority, including personal injury specialists, QCs and judges (retired and current)
- Social workers and counsellors
- Medical and health professionals
- Representatives of relevant affected groups and communities (see paragraph 4.13)
- Representatives of other parties with an interest in the scheme (for example, government and church groups)

4.12 The roles of different personnel varied depending on the purpose and structure of the scheme. Some used different personnel at different stages (for example, the WA scheme) while others such as Jersey and Grandview adopted approaches which involved the assessment of the claim and the determination of the award being undertaken by the same personnel, as part of a single stage in the process.

## Involvement of victims/survivors in scheme development and administration

4.13 The review identified examples of victims/survivors having a role in the development and administration of some schemes, either directly or indirectly, as follows:

- There was a representative of the affected indigenous communities on the expert panel in the Queensland scheme
- Former students of the affected schools were represented on the IRSSA scheme oversight committee
- The Grandview scheme included a Grandview Survivors' Support Group representative on the Eligibility and Implementation Committee, and an aboriginal representative on the adjudication panel
- In Nova Scotia, victims' legal counsel were involved in the decisions concerning the payment of legal fees, details of the compensation package and the choice of file reviewers

## Level of evidence, standard of proof, and responsibility in 'proving' case

4.14 In designing their processes, schemes had to define a standard of proof, determine how this would be applied in practice, and find ways of recognising the distinct issues that arise in relation to providing financial compensation/redress for victims/survivors of abuse in care in a redress scheme, rather than in a



formal civil court setting.<sup>12</sup> Chapter 3 outlines how some schemes have attempted to ensure initial information is of a sufficient quality and standard to enable a finding to be made. Some schemes also explicitly incorporate legal terminology used in the civil courts, where fault or liability for an injury must be established 'on the balance of probabilities'. Some schemes have changed processes relating to the standard of proof over time, as a result of receiving significant criticism in this area. How claimants had to 'prove' their case varied, as did evidence 'tests' applied in assessment and decision making. This is shown in the following examples:

- WA: Applicants' "statements [would] be acknowledged as their personal experience in State care unless there [was] evidence to the contrary" (p.15)<sup>13</sup>. Furthermore, "claims were assessed at a lower level of corroboration of information than would exist under a judicial system of assessment and investigation. Assessments did not subject applicants to the burden of proof, nor were applicants expected to provide criminal or medical evidence of abuse" (p.2)<sup>14</sup>.
- Sweden: The Restitution Commission "proposed that a relatively low standard of additional proof will be required from those applying for compensation. The supporting evidence to be presented should be sufficient to allow that 'it may be suspected' that the person has been exposed to severe abuse or neglect" (p.26)<sup>15</sup>. The Swedish scheme has been criticised, because of the low number of successful applications, for example, Toresson states, "the law and the government bill were widely criticized when it became clear that 43% of those who have applied for compensation have been denied such...The criticism mainly referred to the fact that the compensation is too difficult to receive – to many the consequence of this is, that the compensation system does not fulfil its purpose as a means of redress" (p.1-2)<sup>16</sup>. However, this author then goes on to suggest it is the writing and interpretation of the Act that have been criticised, rather than the standard of proof required by the scheme per se, noting that the two conditions for

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<sup>12</sup> Broader aspects of scheme design often reflect the difference between 'redress' processes and litigation through the civil courts, including for example, the scrutiny applied to a victim/survivor's evidence, the challenges in securing evidence, and the different objectives in terms of establishing guilt or culpability of an individual (or organisation). Furthermore, because of the nature of the issue under consideration, the importance of designing processes which minimise the risk of a victim/survivor being re-traumatised is often highlighted.

<sup>13</sup> Government of Western Australia (2011). *Redress WA Guidelines: Guidelines to provide for an ex gratia payment to persons abused and/or neglected as children while in State care*. Retrieved from: <https://www.findandconnect.gov.au/ref/wa/objects/pdfs/Redress%20WA%20Guidelines%2018%20May%202011.pdf>.

<sup>14</sup> Government of Western Australia (2014). *Government of Western Australia submission to the Royal Commission into Institutional Responses to Child Sexual Abuse: Issues Paper Six – Redress Schemes*. Retrieved from: <http://www.childabuseroyalcommission.gov.au/getattachment/aee1e072-5aef-4922-97f2-e504ea3b8855/61-Western-Australian-Government>.

<sup>15</sup> SOU (2011). As cited in Sköld, J., Foberg, E., & Hedström, J. (2012). Conflicting or complementing narratives? Interviewees' stories compared to their documentary records in the Swedish Commission to Inquire into Child Abuse and Neglect in Institutions and Foster Homes. *Archives and Manuscripts*, 40(1), pp.26.

<sup>16</sup> Toresson, R. (2013). *Den särskilda statliga ersättningen för vanvård i den sociala barnvården – från utredning till ersättning*. Lund Universitet, Juridiska Fakulteten. Retrieved from: <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=4239099&fileId=4250494>.

compensation that have been the most condemned were in connection with care and serious care neglect.

- Grandview: The standard of proof used was the standard for civil proceedings, 'the balance of probabilities' and "the applicant had the obligation to satisfy the adjudicator that the conduct complained of was not minor and the injury sustained was substantial and prolonged" (p.34)<sup>17</sup>. Evidence was mainly in the form of a written application, appropriate supporting documentation and an oral hearing. However, in addition, to the typical review and assessment of evidence, the adjudication process was intended to accomplish a number of additional goals. These included, the opportunity to empower survivors to demand accountability, restitution, official recognition and to "to offer the applicants an opportunity to describe their experiences in their own words to someone with authority" (p.20)<sup>18</sup>.

4.15 There was also evidence of the approach adopted by schemes adapting and changing over time:

- NS: The Government promoted minimal validation, "With few exceptions, the Government regarded the statements for abuse to be true and did not generally anticipate disputes over whether abuse occurred... the view was also expressed that medical and psychiatric records would generally be unnecessary. There would have to be a concrete reason for doubting a claim" (p.134). Initially, this validation process was favoured as, although a small number of invalid claims were expected, adopting this less rigorous process was seen to help "meet stated goals of fair and early compensation for the victims/survivors" (p.180). This scheme was highly criticised, including in relation to fraudulent claims, and the processes adopted latterly to claim validation. The independent review, concluded the philosophy underpinning the initial approach to validation was "deeply flawed" (p.257) stating that there was "significant evidence, direct and circumstantial, that false and exaggerated claims were made to the government. It is now extremely difficult, if not impossible, to reconstruct what abuse did or did not occur within the institutions" (p.341-342). This and other matters resulted in new scheme guidelines being developed, which included the requirement for claims to be proven by the claimant on 'a balance of probabilities', as well as the removal of in-person hearings and the introduction of polygraph tests for employees<sup>19</sup>. The approach adopted following the introduction of

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<sup>17</sup> Shea, G. (1999). *Redress Programs Relating to Institutional Child Abuse in Canada*. Retrieved from: <https://dalspace.library.dal.ca/bitstream/handle/10222/10443/Shea%20Research%20Redress%20Programs%20EN.pdf?sequence>.

<sup>18</sup> Graycar, R., & Wangmann, J. M. (2007). *Redress Packages for Institutional Child Abuse: Exploring the Grandview Agreement as a Case Study in 'Alternative' Dispute Resolution*. Sydney Law School Research Paper 07/50. Retrieved from: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1001148](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1001148).

<sup>19</sup> Ibid.

the revised guidelines resulted in survivors feeling they were not treated with respect and were being presumed to be guilty of fraud, that the fraudulent claims had “ruined the process” (p.298)<sup>20</sup>.

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<sup>20</sup> Ibid.

Table 4.1: DECISION MAKING

Scheme	Decision Making
Tasmania	As at round four, eligibility was assessed by a <b>review team</b> and verified via official records, with additional information sourced if required. Interview then took place with a trained <b>interviewer</b> – interviews took place in informal surroundings with a choice of male or female interviewer. The interviewer prepared a report which was passed to an <b>independent assessor</b> to review and decide on payment. This was submitted for <b>Ministerial approval</b> , and a letter of award was then sent by the Premier. Rejected awards could be reviewed by <b>independent assessors</b> . Corroborative evidence emerged as review progressed to assist with assessing cases.
Queensland	Applications were assessed as either Level 1 or Level 2 depending on severity of abuse. Eligibility for Level 1 payment was established by <b>redress scheme staff</b> , based on self-disclosed information and a search of records (claims of abuse or neglect within Level 1 were accepted based on applicant self-report). Level 2 applications were assessed by a <b>panel</b> of two or three <b>experts</b> using available information. (A panel of four reviewed cases where no decision could be reached). Awards were determined using a matrix, taking account of the nature and severity of abuse or neglect, details of care experience, and known information about the establishment.
WA	Basic details were substantiated by <b>redress scheme staff</b> . Applications were assessed as Level 1 to 4 (indicating severity of abuse). Level 1 and 2 applications were assessed by <b>senior redress officer</b> , and approved (or amended) by <b>Team Leader</b> . Level 3 and 4 applications were assessed by an <b>internal member</b> , with more information sought if required, then passed to <b>independent review panel</b> for approval (or revision), with the <b>Presiding Member</b> , who is the legal member of independent review panel, having final decision if the panel could not agree. Decisions on incomplete or ineligible applications, or payments for deceased applicants, were made by an <b>Executive director</b> , who principally assists the Minister for Community Services in the administration of the Scheme Guidelines. Claims were assessed at lower level of corroboration than in the judicial system (see 4.14 for further details).
CHSH	Applications were verified regarding eligibility and then reviewed by an <b>assessor</b> who carried out a telephone interview. An <b>assessment panel</b> then determined the payment offer based on the severity of abuse suffered. Applicants' statements were acknowledged as their personal experience in state care unless there was evidence to the contrary. Claims were assessed at a lower level of corroboration than would be expected if they were investigated under a judicial system (see 4.14 for further details).
ROI	For each application, the <b>Board</b> had to satisfy themselves of four points relating to identity, residency within the institution, experience of abuse, and injury consistent with alleged abuse. This was done by considering available information and requesting additional information (written or oral), and then making an offer on the basis of abuse suffered, harm caused or

Scheme	Decision Making
	loss of opportunity, using a weighting scale developed by the <b>Compensatory Advisory Committee</b> . If rejected, a hearing was held in front of three <b>Board members</b> – this involved presentation of evidence, witnesses, questioning, etc.
Jersey	Applications assessed by <b>scheme lawyers</b> to confirm eligibility and any additional information required. The claim was then considered by <b>scheme lawyers</b> and <b>Department of Health and Social Services</b> , with an award based on abuse suffered and harm caused using a matrix involving four payment bands.
IRSSA	Eligibility for a common experience payment involved verification of attendance at a relevant school by <b>government researchers</b> . Applications for individually assessed payments were verified by <b>administrators</b> , who sought more information if necessary, and then passed to an <b>adjudicator</b> for a preliminary hearing prior to a full hearing. <b>Adjudicators</b> oversaw the hearing, eliciting a full story, testing evidence, questioning witnesses and determining an award based on a payment matrix. The process was overseen by an <b>oversight committee</b> , and the consistency or outcomes was supported via training and consultation. Standard track cases could be resolved without a hearing – the parties could request adjudicator assistance with this.
NS	Basic details were confirmed via official records. Claims were investigated separately both by the <b>Internal Investigations Unit</b> and <b>file assessors</b> . For eligible claims, <b>file assessors</b> made an offer using a matrix based on the type and severity of the claim. If the offer was rejected, the claimants could negotiate the compensation with the <b>assessor</b> . If the compensation was not agreed, it could be referred to the <b>file reviewer</b> to make a final decision on the compensation amount.
Grandview	An <b>Eligibility and Implementation Committee</b> reviewed the initial application for eligibility and to confirm whether the application should proceed to an individual hearing with the <b>adjudicator</b> , or whether the applicant was entitled to group benefits only. Relevant applications were then submitted to an <b>adjudicator</b> for an oral hearing and the determination of the award using a payment matrix, and completion of a template to record decision. Each decision was reviewed by a <b>second adjudicator</b> to ensure consistency, and the whole <b>adjudication panel</b> could be asked to review a decision.
Sweden	Eligibility was validated by <b>Financial Redress Board (FRB) staff</b> . Cases were prepared by <b>FRB investigators</b> and <b>administrative staff</b> , and then examined by <b>FRB commissioners</b> – a formal oral hearing was carried out chaired by a <b>judge</b> , with three or four <b>commissioners</b> who assessed for credibility/severity and made a flat rate offer.

## 5 SUPPORT FOR VICTIMS/SURVIVORS MAKING AN APPLICATION

5.1 The experience of making an application to any scheme will be unique to the individual involved, and to the arrangements of the particular scheme. The process can, though, present a range of issues for individuals which may highlight the need for support. This was recognised to varying degrees and in differing ways by the schemes reviewed. The support offered by different schemes is discussed below in relation to five main themes:

- Emotional support
- Practical support
- Financial support
- Legal support
- Advocacy
- Other forms of support or assistance

5.2 It should be noted that support offered by individual schemes often cut across these themes.

5.3 Table 5.1 summarises the available information on support for applicants on a scheme-by-scheme basis.

### Emotional support

5.4 Making an application to a redress scheme can be a traumatic experience for those involved. This was recognised in the schemes which generally offered counselling or therapy to those submitting applications. However, the counselling or therapy offered varied. Some schemes offered funding to cover the cost of professional counselling or therapy provided by third parties. In some instances this was capped, for example a maximum of 12 sessions per year was available in the WA scheme; other schemes provided or referred people to a helpline, for example, the NS scheme included a helpline which provided a contact point for the victims and offered access to organisations offering counselling. Available figures indicate a 50 per cent uptake of counselling services in the Tasmania scheme and a 75 per cent uptake in the WA scheme. Although most schemes indicated that counselling or therapy was available to all applicants, the Swedish scheme offered psychological support on a 'case-by-case' basis.

### Practical support

5.5 Submitting a claim to individual schemes generally involved completing an application form, and providing information and/or documentation as 'evidence' of eligibility and of the abuse suffered. It was common for schemes to offer assistance with this important part of the process. This often involved advice and assistance with completing forms and assistance with accessing official records. In some cases, this assistance was provided by the scheme itself (Tasmania and ROI) while in other cases, this support was available through third parties which

operated separately from the scheme (for example, Queensland); in the WA scheme assistance with applications was available through both routes.

## Financial support

5.6 The available information also indicated that most schemes provided varying degrees of financial support to cover necessary costs incurred in making an application for financial compensation/redress (for example, commissioning of medical reports, travel costs for attendance at hearings.). Payment of costs incurred in attending hearings as part of the Swedish scheme was, however, noted as being 'discretionary'.

5.7 In the case of the Queensland scheme, applicants were able to apply to the Forde Foundation<sup>21</sup> for financial support (as well as other types of support) once they had submitted a claim.

## Legal support

5.8 Most of the schemes studied offered some support relating to legal advice and/or legal costs, although the extent of the assistance available varied.

- Five schemes (Jersey, ROI, IRSSA (IAP claimants only), NS and Grandview) covered legal expenses, although these were capped in various ways (for example, ROI and Jersey specified coverage of 'reasonable' legal costs' and IRSSA specified legal costs up to a maximum of 15 per cent of the final award)
- Two schemes offered more restricted provisions: the Queensland scheme required applicants to seek initial legal advice, with costs of up to \$500 available for this; the Tasmania scheme offered initial advice to applicants on the option of seeking redress through the legal system, and provided funding for one legal consultation
- In two cases (CHSH and Sweden), there appeared to be no access to assistance with legal costs; in the former case, a legal representative could be used but this was at the expense of the claimant

## Advocacy support

5.9 Appearing and speaking at any sort of hearing can be a daunting experience for many individuals. Schemes that incorporated personal hearings or interviews for applicants addressed this in a number of ways. Some schemes (IRSSA, ROI and Sweden) made provision for claimants to bring a supporter to hearings, or (in the Grandview scheme) allowed applicants to have legal

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<sup>21</sup> The Forde Foundation was established in August 2000 'for the relief of poverty, for the advancement of education, training or development, personal and social support, relief of sickness, suffering distress, general enhancement of social and economic wellbeing or for any other purposes beneficial to persons who have been wards of the State or under guardianship of the State or have been resident, as a child, in a Queensland institution'. It formed part of the Government's responses to the final report of the Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry). See: <http://fordefoundation.org.au/>.

representation at hearings (although few did). More often, however, there was evidence of schemes taking steps to make participation in hearings or interviews an easier experience for the individuals involved by adopting non-adversarial, 'therapeutic' or informal processes; by trying to create relaxed or informal environments; or by recognising and respecting the individual experiences and characteristics of victims/survivors by, for example, holding hearings in different locations convenient for or familiar to applicants (Grandview and ROI), using trained interviewers and offering the choice of male or female interviewers (Tasmania), or using female adjudicators and ensuring aboriginal representation in order to reflect the gender and ethnicity of the applicant group (Grandview).

## Other forms of support or assistance

5.10 The review identified a range of other ways in which schemes provided support or assistance to applicants, or worked to offer a victim-orientated approach. These included:

- The opportunity for claimants to state the outcome they sought from their application (Tasmania)
- The establishment of systems for referring cases on to other agencies, such as, protocols for referring cases to the police or other agencies (Tasmania, WA, CHSH and, following the first phase of the scheme, NS)
- The provision of additional support for those with special needs via the Office of the Public Guardian (WA)
- The production of a booklet outlining support services available, and the issuing of newsletters about the scheme (WA)
- Assistance with family searches and referrals to support groups (WA)
- Provide the opportunity during the application process for victims/survivors to access their own records (Tasmania)
- Access to drug addiction services (NS)
- Financial assistance with tattoo or scar removal or reduction (Grandview)



Table 5.1 SUPPORT FOR VICTIMS/SURVIVORS MAKING AN APPLICATION

Scheme	Support for victims/survivors making an application
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• Applicants had access to counselling services from initial contact, but this was discontinued if the claim was disallowed (50 per cent uptake)</li> <li>• Assistance was available via a helpline for accessing records and completing the application</li> <li>• Applicants were given advice on options for legal action, plus funding for one legal consultation; legal costs of up to \$300 were covered (round 3 and 4)</li> <li>• Medical and other expenses incurred in relation to the claim were covered</li> <li>• Hearings: face-to-face interviews held in informal settings, with choice of male or female interviewer</li> </ul>
Queensland	<ul style="list-style-type: none"> <li>• Applicants had access to counselling services</li> <li>• Practical assistance was available from government-funded support services for submitting an application</li> <li>• Applicants were able to apply to The Forde Foundation for a range of support and benefits</li> <li>• Applicants were required to seek legal advice (funded by the scheme); legal costs up to \$500 were available – applicants were provided with a list of personal injury lawyers who would act for a set fee of \$500</li> <li>• Hearings: intended as non-adversarial process</li> </ul>
WA	<ul style="list-style-type: none"> <li>• Applicants had access to a helpline, support groups, workshops, counselling (up to 12 sessions in a year), and family search services</li> <li>• Applicants had access to support from a network of non-government agencies commissioned with submitting of applications. Support was provided in accessing records (via freedom of information request) and in completing application (from Redress Officer)</li> <li>• A booklet and newsletters was produced</li> <li>• Assistance was also provided via Office of Public Guardian (for those with reduced capacity)</li> <li>• Hearings: no formal hearings were conducted. Assessment interviews, when necessary, were conducted by trained counsellors or advocates via telephone conferences</li> </ul>
CHSH	<ul style="list-style-type: none"> <li>• Applicants were signposted to crisis hotline</li> <li>• Legal representation was not required, but could be used at expense of applicant</li> </ul>
ROI	<ul style="list-style-type: none"> <li>• Applicant had access to counselling and support (via Towards Healing)</li> <li>• Applicant could seek assistance from the Board in making an application</li> <li>• Reasonable legal and other costs and expenses incurred when applying for the scheme were covered by the scheme</li> <li>• Hearings: could be held in various locations</li> </ul>

Scheme	Support for victims/survivors making an application
Jersey	<ul style="list-style-type: none"> <li>Reasonable legal fees, medical expenses and other application-related costs were covered</li> </ul>
IRSSA	<ul style="list-style-type: none"> <li>Applicants had access to counselling</li> <li>Legal and other necessary costs for those making IAP claims were covered via inclusion in final award (up to a maximum of 15 per cent)</li> <li>Hearings: reasonable costs for a support person were covered; cultural symbols/rituals were incorporated into hearings</li> </ul>
NS	<ul style="list-style-type: none"> <li>Applicants had access to counselling, via a helpline, and were signposted to drug addiction services</li> <li>Legal fees (capped) and other expenses covered</li> </ul>
Grandview	<ul style="list-style-type: none"> <li>Applicants had access to therapy or counselling; there was a helpline, plus additional support such as tattoo or scar removal or reduction for all former residents</li> <li>Legal expenses of applicants pursuing individual claims were covered (but capped)</li> <li>Hearing: hearings were held in various locations, and were intended to be informal and non-confrontational</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>Psychological support was offered to applicants on a case-by-case basis</li> <li>Assistance was provided in accessing claimants' records</li> <li>Expenses for attending the hearing could be covered on a discretionary basis; applicants did not have access to legal assistance</li> <li>Hearings: applicants were entitled to bring a support person along to the oral hearings</li> </ul>

## 6 PAYMENTS

6.1 It is important that the approach to calculating payments for victims/survivors in a redress scheme is transparent, reasonable and fair. This was approached in a number of different ways in the ten schemes reviewed. There were three broad approaches used:

- Standard payments: payments which are predetermined and awarded to eligible applicants regardless of their individual experience
- Individually assessed payments: payments which are individually calculated and take account of the experience of each claimant, the abuse they suffered, and the impact this has had on their life
- A combination of standard payments and individually assessed payments

6.2 Table 6.1 summarises the different elements which formed part of the financial awards across the schemes studied, and shows the following:

- Seven of the schemes – Tasmania, WA, CHSH, ROI, Jersey, NS and Grandview – were based on individually assessed payments
- One scheme, Sweden, was based on a standard payment only, which was awarded to all eligible applicants. In this case the payment was explicitly intended as ‘recognition’ of the abuse and harm caused, rather than ‘compensation’
- Two schemes –IRSSA and Queensland – were based on a combination of standard payments and individually assessed payments. In the Queensland scheme, applicants could apply for a Level 1 payment only or could apply for a Level 1 and Level 2 payment, with all those assessed as eligible receiving a standard Level 1 payment. In the IRSSA scheme all former residents of the schools covered by the scheme were eligible for a common experience payment – a sum awarded depending on the years spent at the school – plus personal credits up to the value of \$3,000 for access to education for use by the applicant or their family. Residents who suffered serious abuse were eligible to also apply to the Individual Assessment Process

6.3 In several cases, the individually assessed compensation payment was supplemented by additional payment elements:

- The ROI scheme offered the option of an additional redress payment (maximum 20 per cent of award) in exceptional cases, and medical expenses not exceeding 10 per cent of the award
- The Jersey scheme offered medical expenses up to £3,000 (other than in exceptional cases)
- The IRSSA scheme offered a payment for proven loss of income up to C\$250,000, and a contribution for other costs up to 15 per cent of award

- The NS scheme offered a counselling payment of C\$5,000, C\$7,500 or C\$10,000
- The Grandview scheme offered an additional payment for other expenses up to C\$3,000

**Table 6.1 PAYMENT AMOUNTS**

<b>Scheme</b>	<b>Standard payment</b>	<b>Individually assessed payment</b>
Tasmania	–	Individually assessed payment: Rounds 1–3: Aus\$5,000–\$60k (with scope for payment above maximum in exceptional circumstances; Round 4: Aus\$5,000–\$35,000 (reduced for sustainability reasons) (See summary overview table on page 50 for more detail on different rounds)
Queensland	Flat rate 'Level 1' payment: Aus\$7,000	Individually assessed payment: Aus\$6,000–\$33,000
WA	–	Individually assessed payment: Aus\$5,000–\$45,000 (original Aus\$80,000 - maximum reduced for sustainability reasons)
CHSH	–	Individually assessed payment: up to Aus\$5,000–\$45,000
ROI	–	Individually assessed payment: up to €300,000 + additional redress (max 20 per cent of award) in exceptional cases + medical expenses not exceeding 10 per cent of award
Jersey	–	Individually assessed payment: up to £60,000 + medical expenses up to £3,000 (other than in exceptional cases)
IRSSA	Common experience payment: C\$10,000 for first school year (or part year) + C\$3,000 for each year (or part) thereafter.	Individually assessed payment: C\$5,000 - \$275,000 + payment for proven loss of income up to C\$250,000 + contribution for other costs up to 15 per cent of award
NS		Individually assessed payment: up to C\$120,000 + counselling payment C\$5,000, C\$7.500 or C\$10,000
Grandview	–	Individually assessed payment: C\$3,000–\$60,000 + payment for other expenses up to \$3,000
Sweden	Flat rate payment: SEK250,000	–

## Calculation of individually assessed payments

6.4 Further information on the calculation of payments was available for eight schemes that involved individually assessed awards (no information was available on calculation of awards in the Tasmania scheme). See Table 6.2.

6.5 All the schemes used payment matrices or tariff tables of various types to determine the sum paid. The matrices or tariff tables involved a payment scale which typically took account of the type of abuse suffered, for example physical, sexual, emotional and/or neglect, and the nature and severity of the injury or harm caused (physical or psychological). Some schemes also took account of loss of opportunity or earnings (ROI, IRSSA and Queensland) and future care needs (IRSSA). Recognition of such elements as 'loss of opportunity' and 'future care needs' may more closely reflect the approach used to calculating damages in personal injury claims pursued through the civil courts.<sup>22</sup>

6.6 In five cases (ROI, Jersey, IRSSA, NS and Grandview), the matrices or tariff tables involved a scale that was made up of a series of payment ranges. The ranges indicated the highest and lowest award that could be made for a case allocated to a particular category. In three cases (Queensland, WA and CHSH) the matrices or tariff tables involved a series of fixed payments payable dependent on the category to which the abuse was allocated.

6.7 In most schemes, cases were allocated to categories that then aligned with payment bands or payment points on the payment scale. In allocating cases to categories there were two broad systems:

6.8 Point-based systems: Three of the schemes (ROI, IRSSA and Queensland) used a point-based system, with points awarded for different elements within the overall experience of abuse, according to the nature and/or severity of the abuse. The sum of the points awarded then determined allocation to a range on a payment scale, and a final decision was then taken about the exact award to be made for a specific case.

6.9 Discretion-based systems: Five schemes used what appeared to be discretion-based systems, which did not involve the awarding of points. In four schemes (WA, CHSH, Jersey and NS) cases were assessed against various criteria and allocated to a category which aligned to a payment point/band. File reviewers in the NS system did, however, use statements from individual cases which were regarded as representative of each category of compensation as guidance in the assessment process. The Grandview scheme was somewhat different in its approach, in that it used a single-stage process in which the assessors considered cases and determined a payment amount using a payment matrix, without allocating to an intermediate case category.

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<sup>22</sup> Daly, K. (2016). 'Money for Justice? Money's Meaning and Purpose as Redress for Historical Institutional Abuse'. In Smaal, Y., Kaladelfos, A. and Finnane, M. (Eds.), *The Sexual Abuse of Children: Recognition and Redress*. Monash, Australia: Monash University Publishing.

**Table 6.2 APPROACH TO CALCULATION OF INDIVIDUALLY ASSESSED COMPENSATION PAYMENTS**

<b>Scheme</b>	<b>Assessment process/criteria used</b>	<b>Payment / payment ranges</b>
Tasmania	No information available.	(Round 1–3): Aus\$5k–\$60,000 (Round 4): Aus\$5,000–\$35,000  (See page 50 for further information on the 4 rounds)
Queensland	Points awarded in a weighting system across seven criteria: 1. Physical injury (including harm from sexual abuse and/or neglect) during placement 2. Physical injury (including harm from sexual abuse and/or neglect) post placement 3. Physical illness (including harm from sexual abuse and/or neglect) during placement 4. Physical illness (including harm from sexual abuse and/or neglect) - post placement 5. Psychological injury / psychiatric illness (including harm from sexual abuse and/or neglect) during placement 6. Psychological injury / psychiatric illness (including harm from sexual abuse and/or neglect) postplacement 7. Loss of opportunity	The total % points were aligned with five levels of severity of abuse. This determined the payment made.  Level 1, 0–14%: Aus\$7,000 only  Level 2 If successful at L2, applicants would receive their L1 payment plus: (Very serious 15–24%): Aus\$6,000 (Severe - 25–39%): Aus\$14,000 (Extreme 40–59%): Aus\$22,000 (Very extreme 60–100%): Aus\$33,000
WA	Claims were allocated to one of four levels based on severity of abuse: Level 1 – moderate abuse and/or neglect Level 2 – serious abuse and/or neglect suffered with some ongoing symptoms and disability Level 3 – severe abuse and/or neglect suffered with ongoing symptoms and disability Level 4 – very severe abuse and/or neglect suffered with on-going symptoms	Level 1: Aus\$5,000 Level 2: Aus\$13,000  Level 3: Aus\$28,000  Level 4: Aus\$45,000 (reduced from original Aus\$80,000 maximum)
CHSH	No information available.	1: \$5,000 2: \$20,000 3: \$45,000

Scheme	Assessment process/criteria used	Payment / payment ranges
ROI	<p>A points-based system with points awarded across 4 criteria:</p> <ol style="list-style-type: none"> <li>1. Severity of abuse</li> <li>2. Medically verified physical/psychiatric illness</li> <li>3. Emotional and social effects of abuse</li> <li>4. Loss of opportunity</li> </ol>	<p>The total points determined the payment band, with the award decided within the set range.</p> <p>0–25 points: up to €50,000</p> <p>25–39 points: €50,000–€100,000</p> <p>40–54 points: €100,000–€150,000</p> <p>55–69 points: €150,000–€200,000</p> <p>70+ points: €200,000–€300,000</p>
Jersey	<p>Claims assessed and allocated to one of four categories:</p> <p>Category 1. - physical and/or sexual abuse.</p> <p>Category 2 - aggravated physical and/or sexual abuse.</p> <p>Category 3 - rape and/or prolonged aggravated physical and/or sexual abuse: standard bracket</p> <p>Category 4 - rape and/or prolonged aggravated physical and/or sexual abuse: upper bracket.</p>	<p>Payments were then decided within the range for the category of abuse</p> <p>Category 1: Up to £10,000</p> <p>Category 2: £10,000–£20,000</p> <p>Category 3: £15,000–£35,000</p> <p>Category 4: £ 25,000–£60,000</p>
IRSSA	<p>A points-based system with points awarded across five criteria:</p> <ol style="list-style-type: none"> <li>1. acts proven</li> <li>2. consequential harm</li> <li>3. aggravating factors</li> <li>4. future care needs</li> <li>5. consequential loss of opportunity*</li> </ol> <p>*could be replaced by award for 'proven actual income loss'</p>	<p>The total points determined the payment band, with the award decided within the set range.</p> <p>1–10 points: \$5,000–\$10,000</p> <p>11–20 points: \$11,000–\$20,000</p> <p>111–120 points: \$211,000–\$245,000</p> <p>121+ points: up to \$275,000</p>
NS	<p>Claims were allocated to a category between 1-12, based on the type and severity of abuse:</p> <p>Category 1: severe sexual and severe physical.</p> <p>Category 2: severe sexual and medium physical, sever physical and medium sexual.</p> <p>(This type of categorisation continues through to category 12).</p> <p>Category 11: minor sexual</p> <p>Category 12: minor physical and/or sexual interference.</p>	<p>The payment award is decided within the set range for each category of abuse. For example,</p> <p>Category 1: \$100,000 - \$120,000</p> <p>Category 2: \$80,000–\$100,000</p> <p>....</p> <p>Category 11: \$5,000–\$30,000</p> <p>Category 12: \$0–\$5,000</p>

Scheme	Assessment process/criteria used	Payment / payment ranges
Grandview	<p>Claims were allocated to one of four different payment levels based on alleged abuse and level of harm or injury, with awards decided within available payment range:</p> <p>Level 1 - on proof of acts of abuse or mistreatment</p> <p>Level 2 - where serious harm is found by the adjudicator</p> <p>Level 3 - physical abuse involving hospitalisation with broken bones or serious internal injuries, or an isolated act of sexual abuse or abuse of position of trust</p> <p>Level 4 - repeated serious sexual abuse and physical abuse</p>	<p>Level 1: \$3,000</p> <p>Level 2: \$10,000-\$20,000</p> <p>Level 3: \$20,000-\$40,000</p> <p>Level 4: \$40,000-\$60,000</p>

## Approach to determining payment amounts

6.10 Information was identified on how the payment amounts available in the schemes had been determined for five of the schemes (ROI, NS, IRSSA, Jersey and Sweden). In four cases (IRSSA, Jersey, ROI and Sweden), the approach was guided by the sums that would be awarded by civil courts in similar matters; ROI and IRSSA drew on precedent in their own jurisdiction (in the case of IRSSA this was only with regard to compensation for loss of income), while in the case of Jersey, the approach was guided by legal counsel (QC) advice on what would be awarded in High Court cases in England and Wales. In the remaining case (NS), the approach to setting the sums available was based on compensation programmes in other jurisdictions.

6.11 There were also broader contextual factors related to the origin and development of schemes that potentially influenced the differing payment amounts. For example, the Swedish scheme explicitly stated that the award was intended as recognition of the harm caused, rather than as 'compensation'; in the WA scheme payments were meant as an 'expression of regret and not intended to represent full reparation'; the Grandview scheme emphasised that the financial award was part of a package of benefits intended to maximise the value of any sum awarded and assist with 'healing'; and the Jersey scheme took account of the benefit to claimants afforded by the streamlined administrative process (in comparison to civil court proceedings) in setting its payment rates.

## Previous payments and future claims

6.12 The various schemes reviewed took different approaches in their treatment of previous compensation payments that applicants may have received in respect of abuse suffered, and the possibility of applicants taking further legal



action in the future. The approaches are summarised in Table 6.3 (over) with key points summarised below.

Previous payments:

- In five schemes (WA, CHSH, NS, Grandview and Sweden), applicants **were eligible** to make a claim even if they had received previous payments in respect of the abuse covered by the scheme. In two cases (WA and CHSH), this was taken into account in determining the payment and, in one case (Sweden), no account was taken of previous payments; in the remaining two cases, the account taken of previous payments was not clear from the available information.
- In two schemes (ROI and Jersey), applicants **were not eligible** if they had already received a payment. The Jersey scheme did, however, allow applicants to have received a payment from the Criminal Injuries Compensation Board.
- One scheme (IRSSA) offered two different criteria. With the Common Experience Payment, applicants **were eligible** regardless of previous payments; with the Individual Assessment Payment, applicants **were not eligible** if they had received a previous settlement from a trial or resolution process.
- In Tasmania and Queensland – the situation regarding previous legal payments was not clear from the available information.

Future legal action:

- In seven schemes (Tasmania, Queensland, ROI, Jersey, IRSSA, NS and Grandview), applicants **had to give up the right** to pursue future legal action, either as a condition of making a claim or as a condition of accepting an award, although the right to take action against an individual employee remained in the case of NS
- In two schemes (WA and CHSH) applications **did not lose the right** to take legal action in the future
- In the case of the Swedish scheme, the situation regarding future legal action was **not clear** from the available information

Table 6.3 PREVIOUS AND FUTURE PAYMENTS

Scheme	Account taken of previous payments	Implications for future claims
Tasmania	Applicants who had received financial compensation from a previous Stolen Generation scheme were eligible, as long as they met the scheme criteria. No information available on conditions relating to previous <i>legal</i> action.	In order to receive a payment, applicants were required to indemnify the State against all current and future claims arising from the applicant's abuse in care.
Queensland	No information available.	In order to receive payment, applicants were required to indemnify the State against all current and future claims that fell within the scope of the scheme.
WA: Redress	Applicants were required to advise if they had previously received payments from other organisations or had received criminal injuries compensation for the same abuse and/or neglect, and this was taken into account in determining the level of scheme payment.	2011 scheme guidelines indicate that applicants did not lose the right to pursue future action, with parliamentary debate indicating that this was a change to the original scheme.
CHSH	Applicants were required to advise if they had previously received payments from other organisations or had received criminal injuries compensation for the same abuse and/or neglect, and this was taken into account in determining the level of scheme payment.	There were no conditions for accepting an ex-gratia payment offer, and applicants did not lose the right to pursue future action.
ROI	Applicants were not eligible if they had already received damages from a court or a settlement in respect of the abuse and injuries described in the application for redress, or if a claim for damages had been unsuccessful.	Applicants had to give up the right to any additional action against the Department of Education and Science and/or other persons or bodies as a condition of accepting their award. Applicants who refused the award retained the right to take legal action.
Jersey	Applicants were not eligible if damages had already been awarded by court or had been agreed and paid in relation to abuse. Any CICB award already made was deducted from the final award assessed by the scheme.	Applicants had to confirm the assessed award and their acceptance that the award would be in full and final settlement of their claim (they also had to agree not to disclose the amount). Applicants who refused the award retained the right to take legal action.

Scheme	Account taken of previous payments	Implications for future claims
IRSSA	Eligibility criteria varied between the Common Experience Payment and Individual Assessment Payment processes. The CEP was open to all former students who attended one of the recognised schools, whilst the IAP was not open to individuals who had received compensation via court processes or the dispute resolution process.	Applicants who stayed within the settlements (i.e. they did not 'opt out') gave up their right to take legal action. Those who opted out could take legal action.
NS	Those who had been offered compensation through the courts were eligible to apply to the scheme (but the account taken of any previous payments is not clear).	Applicants had to give up their right to sue the Province or the individuals responsible for administering the institutions, but retained the right to sue the individual employee accused of committing abuse.
Grandview	Applicants had to provide information on any previous/current claim they had made against the Government for damages arising from their time at Grandview (but the account taken of any previous payments is not clear).	Applicants had to release the Government from any further liability.
Sweden:	Those who had already received compensation were eligible to apply to the scheme and previous payments were not taken into account.	No information available.

## Other elements of redress

6.13 All of the schemes reviewed also offered other elements of redress to individual claimants in addition to their main financial award. Most commonly these included apologies or acknowledgement of the abuse, various types of counselling services, funding for medical or health services, funding for education and training, and assistance with relocation and housing. In some cases, the redress was very particular to the circumstance of the scheme (for example, assistance with locating long lost family in the Tasmania scheme, and tattoo and scar removal in the Grandview scheme).

6.14 The various forms of individual redress offered in each scheme are summarised in Table 6.4 below. The following should be noted:

- Some of the listed elements of redress represented a financial payment paid alongside the compensation award made by the scheme (see paragraph 6.3 / Table 6.1); others were services or funds available on application from third parties and funded by government
- Some elements of redress were available to all applicants (or all those included within a settlement agreement) - they did not depend on a financial award being made
- Redress elements often reflect other public service arrangements in a country for example, the arrangements for accessing health care, and whether this would normally be payable individually or via an insurance scheme

6.15 As well as offering individual benefits (as shown in Table 6.4), some schemes offered redress and reparation of a wider nature. This included public apologies, memorials, and recording of testimonials. At times, research and evaluation was also undertaken in order to better understand the context to how abuse had occurred, to inform awareness raising and prevention strategies.

Table 6.4 OTHER ELEMENTS OF REDRESS

Scheme	Other elements
Tasmania	<ul style="list-style-type: none"> <li>• An individual apology letter from the Premier</li> <li>• Counselling</li> <li>• Assistance in locating long-lost family*</li> <li>• Payment of medical expenses*</li> <li>• Legal advice</li> <li>• *as requested by applicants in round 1</li> </ul>
Queensland	<ul style="list-style-type: none"> <li>• Counselling</li> <li>• Funds for household goods or appliances</li> <li>• Funds for education, training or personal development</li> <li>• Items for self-improvement</li> <li>• Assistance with health and dental care</li> <li>• Family reunion costs</li> <li>• Relocation costs <ul style="list-style-type: none"> <li>– Available via The Forde Foundation</li> </ul> </li> </ul>
WA	<ul style="list-style-type: none"> <li>• An individual apology letter from the Premier</li> <li>• Counselling and support</li> <li>• Referral of assault reports to relevant agencies</li> <li>• Assistance finding out more about their personal histories and/or identities</li> </ul>
CHSH	<ul style="list-style-type: none"> <li>• Referral or assault reports to relevant agencies</li> <li>• Counselling and support</li> <li>• The opportunity to have their experience heard</li> </ul>
ROI	<ul style="list-style-type: none"> <li>• Medical expenses for past and future costs relating to the abuse</li> <li>• Health and wellbeing, housing, learning and development services and support available from Caranua (established by the Residential Institutions Statutory Fund Act 2012) - this was also available to family</li> <li>• Counselling and other support available from Towards Healing (church agency, previously Faoiseamh service)</li> </ul>
Jersey	<ul style="list-style-type: none"> <li>• Medical expenses</li> <li>• Therapeutic support</li> </ul>
IRSSA	<ul style="list-style-type: none"> <li>• Payment for loss of income</li> <li>• Range of social, psychological and medical support available via the Truth and Reconciliation Project</li> <li>• Contribution to other necessary and reasonable costs</li> <li>• Up to C\$3,000 of personal credits for access to education for use by applicants or family members</li> </ul>
NS	<ul style="list-style-type: none"> <li>• An individual apology letter from the Minister of Justice</li> <li>• Counselling payment, which could be applied to the cost of employment, psychological or financial counselling and to tattoo removal, employment upgrading, educational courses and dental work in the third phase</li> <li>• A list of government services available to claimants</li> <li>• An independent record of survivor testimonials</li> </ul>

Scheme	Other elements
Grandview	<p>Group benefits (for any former ward of Grandview during relevant period):</p> <ul style="list-style-type: none"> <li>• Crisis line</li> <li>• Tattoo or scar removal or reduction</li> </ul> <p>Individual benefits (for any former ward whose application was validated by an adjudicator; this was additional to group benefits)</p> <ul style="list-style-type: none"> <li>• An individual acknowledgement from the Government</li> <li>• Assistance/support for vocational / educational training / upgrading</li> <li>• Payments for major/exceptional medical/dental expenses</li> <li>• Financial services</li> <li>• Counselling or therapy</li> <li>• Contingency fund payment to cover expenses not covered by other benefits</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>• Psychological support on a case-by-case basis</li> </ul>

## 7 THE ROLE OF THE GOVERNMENT AND OTHER PARTIES

7.1 The Scottish Human Rights Commission notes that, in line with international good practice, care providers/institutions should contribute to reparations packages to the extent to which they are accountable<sup>23</sup>. This was taken forward in different ways in redress schemes around the world relating to abuse in care.

7.2 In all but two of the schemes reviewed here, the redress payments and related benefits were entirely state funded, even if the scheme covered care provided by other bodies (for example in the case of Tasmania and WA). In the remaining two schemes (ROI and IRSSA), other care providers – in both cases church bodies – contributed to the fund. In both cases this was done by way of agreements which indemnified the churches against future legal action. In the ROI scheme, the agreement was based on a 50/50 split between the church and the State, while in the IRSSA scheme, the church contribution was intended to be 'proportionate'. However, in neither case did the churches make the agreed contributions in full.

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<sup>23</sup> SHRC (2010). *A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum" and other remedies for historic child abuse in Scotland* (p. 38). Retrieved from [http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice\\_remedies.doc](http://www.scottishhumanrights.com/media/1285/justicehistoricabusewordhrframeworkjustice_remedies.doc).

## 8 CONCLUSION

This report presents a descriptive, summary overview of relevant administrative elements in respect of ten selected financial compensation/redress schemes in different countries. As with the schemes discussed in this report, how a potential financial compensation/redress scheme may develop in Scotland will be influenced from origin through to implementation by a number of factors, including: the intended purpose and meaning of any financial compensation/redress, the other reparation responses and developments implemented to date, and the wider political and societal context of the time.

In recent years, by adopting a Human Rights approach, Scotland has made progress in a number of areas relating to acknowledgment and accountability for victims/survivors of abuse in care through the implementation of the Action Plan on Justice for Victims of Historic Abuse of Children in Care<sup>24</sup>.

This report provides insight and relevant information in order that the next steps for Scotland in respect of financial compensation/redress for victims/survivors of abuse in care can be viewed within an international context.

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<sup>24</sup> SHRC (2014). *Action Plan on Justice for Victims of Historic Abuse of Children in Care*. Retrieved from <https://www.shrcinteraction.org/Portals/23/Action-Plan-on-Historic-Abuse-of-Children-in-Care-Nov-2013.pdf>.



## APPENDIX 1: Summary overview tables of individual schemes

This appendix presents a brief summary table for each of the individual schemes included in this descriptive summary paper with the aim of allowing schemes to be understood in their entirety.

As with the rest of the report, there are limitations regarding the consistency and comparability of available information across schemes. The descriptions are not intended to be exhaustive, and should be read alongside the information on the various aspects of each of the schemes provided in the main body of this report (Chapters 2 to 7). Further information is also available from the original source material for each scheme (see References section, pages 70-88).

## Australia: Tasmania's Claims of Abuse in State Care Program

### Tasmania's Claims of Abuse in State Care Program

**Origin/purpose:** This scheme was established as part of independent review of claims by adults of abuse suffered in Tasmanian state care as children (state and non-state establishments). It was intended as a 'healing process' to help bring closure for victims. The scheme was run by the Tasmanian Ombudsman / Dept. of Health and Human Services / Dept. of Premier and Cabinet (varied across rounds), and offered ex-gratia payments for people who had suffered emotional, physical or sexual abuse. Scheme incorporated a protocol for referring cases to police, and the opportunity for individuals to state the outcome they sought.

**Elements of redress:** (as at round four): Personal apology from Premier and acknowledgement of abuse, counselling (three sessions), legal advice (up to Aus\$300).

**General:** Formal apology from Premier.

**Operational overview:** The scheme ran for 10 years (2003 to 2013) over four rounds in order to accommodate subsequently emerging claims. The scheme received 2414 claims and made 1848 awards (four not accepted as at Dec 2013).

**Eligibility:** Aged over 18, in 'state care' as a child (as defined by scheme) and placed in institution / home; must not have made claim within any previous round (additional criterion added after round 1).

**Next of kin eligibility:** No information.

**Priority groups/Interim payments:** No information.

**Support for applicants:** Applicants had access to counselling services from initial contact (discontinued if claim disallowed) (50% uptake).

Assistance was available for accessing records and telephone assistance was available to applicants.

Applicants were given advice on option for legal action, plus funding for one legal consultation (information on rounds 3 and 4 indicates that legal costs up to Aus\$300 were covered).

Medical and other expenses incurred in relation to the claim were covered.

**Hearings:** Face-to-face interviews held in informal settings, with choice of male or female interviewer.

### Application and administration

**Application rounds:** The reason for four rounds of the Program was in response to additional claims coming forward after the previous round ended. Each round was administered as follows:

Round 1: Administered jointly by the Tasmanian Ombudsman's office and the Department of Health and Human Services (DHHS)

Round 2: As above in Round 1.

Round 3: Administered by Department of Premier and Cabinet (DPAC) in partnership with DHHS

Round 4: Administered by DHHS alone.

**Information required (as at round 4):** Applications required contact details, and information on time spent in care and description of abuse. Applicants also

had to provide confirmation of identity, a signed and witnessed declaration, and permission for a police check of prior convictions. Information provided by applicants, and eligibility for scheme, were verified using official information and records. Further information that might support the claim was sought, as required. Interviews were then carried out by trained interviewers, allowing applicants to provide face-to-face testimony; interviews were recorded and sealed. Applicants were given the opportunity to access their records.

**Decision-making (as at round 4): Eligibility** assessed by review team and verified via official records, with additional information sourced if required. Interview then took place with trained interviewer – interviews took place in informal surroundings with choice of M/F interviewer. Interviewer prepared report which was passed to an independent assessor to review and decide on payment. This was submitted for Ministerial approval, and a letter of award was then sent by the Premier. Rejected awards could be reviewed by independent assessors. Corroborative evidence emerged as review progressed to assist with assessing cases.

**Approach to payments:** Payments up to Aus\$60,000 in rounds 1 to 3 (with scope for the independent assessor to recommend payment above the maximum in exceptional circumstances); and up to Aus\$35,000 in round 4 (reduced for sustainability reasons) (lowest award made: Aus\$5,000). No information available on calculation of individual payments.

**Conditions:** Applicants were required to indemnify state against future claims.

**Role of lawyers/other professionals:** Independent assessor was QC; claimant given opportunity and limited funding to seek legal advice.

**Role of government and other parties:** State run and funded scheme.

## Australia: Queensland National Redress Scheme

### Australia: Queensland National Redress Scheme

**Origin/purpose:** The scheme was the Government's response to the 1998–99 Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry) which examined alleged abuse, mistreatment or neglect of children in Queensland institutions. The scheme provided ex-gratia payments to eligible applicants. Payments were not compensatory but were an acknowledgement of past harm. The scheme provided a non-adversarial alternative to pursuing claims through the civil courts. A public consultation helped inform key aspects of the scheme.

**Elements of redress:** The government-funded Forde Foundation (set up in 2000) offered counselling and a range of support to former state wards.

**General:** Religious bodies that had run institutions issued apologies, and a government apology was issued in 1999 by the state Premier.

**Operational overview:** The scheme ran from 2007 to 2010 (original deadline extended to allow further applications). The scheme received 10,218 applications and made 7,453 awards and 7,168 payments.

**Eligibility:** The scheme was open to those who had been placed in government or non-government children's institutions covered by the terms of reference of the Forde Inquiry, and had been released from care and were aged 18 on or before 31 December 1999, and had experienced institutional abuse or neglect. The scheme covered physical injury, physical illness, psychiatric illness, psychological injury and loss of opportunity.

**Next of kin eligibility:** Already agreed awards could be paid to next of kin if a claimant died prior to payment being made; discretionary funeral costs could be paid if an applicant died prior to case conclusion. **Priority groups:** over-70s and the terminally ill.

**Interim payments:** No interim payments, but applicants could receive level 1 payment while level 2 payment was being considered.

**Support for applicants:** Applicants had access to counselling services, and practical assistance was available from government-funded support services for submitting an application.

Applicants were able to apply to The Forde Foundation for range of support and benefits.

Applicants were required to seek legal advice; legal costs up to \$500 were available – applicants were provided with a list of personal injury lawyers who would act for a set fee of \$500.

**Hearings:** intended as non-adversarial process.

### Application and administration

**Information required:** Applications included a signed declaration of the abuse or neglect experienced and acceptance of the terms of the scheme. A search of departmental records and other available information was undertaken to verify the applicant's placement in an eligible institution; in the case of privately placed children, confirmation depended on information released by care providers.

**Decision-making:** Eligibility for level 1 payment was established by Redress Scheme staff based on self-disclosed information and search of records (plausibility not assessed). Level 2 claims were assessed by a panel of two/three experts (lawyers, psychologists, social workers, etc.) using available information. Award determined using matrix, taking account of nature and severity of abuse/neglect, details of care experience and known information about establishment. A panel of four reviewed cases where no decision could be reached.

**Approach to payments:** Level 1 payment (standard Aus\$7,000) available to all who met eligibility criteria; level 2 payments (up to Aus\$33,000) available to those who satisfied the panel about significant abuse or neglect suffered. The payment structure involved 5 levels (four of which related to Level 2 payments), with individual payments determined against seven criteria using a matrix based on type/severity of abuse.

**Conditions:** Acceptance of payment required legal advice and indemnifying state against further claims.

**Role of lawyers/other professionals:** Lawyers and other professionals involved as panel members; applicants were required to seek (funded) legal advice before accepting award.

**Role of government and other parties:** State-run and funded scheme.

## Australia: Redress Western Australia (WA) Scheme

### Australia: Redress Western Australia (WA) Scheme

**Origin/purpose:** The scheme was set up to acknowledge and apologise to adults who, as children were abused and/or neglected while they were in the care of the State. It aimed to '*provide a means of redress for all victims of abuse in State care, including those whose claims would be otherwise statute barred, that is less combative, more practical, more conciliatory and focussed on assisting victims with the healing process*' (p.1)<sup>25</sup>. The ex-gratia payments were an expression of regret and not meant as compensation<sup>26 27</sup>.

**Elements of redress:** Ex-gratia payment; opportunity to make a police referral; individual apology from the Premier; support and counselling services; assistance in finding out about their personal histories.

**General:** Public apology and a memorial.

**Operational overview:** The scheme was open for applications from May 2008 to June 2009. It received 5917 claims (from 10,000 initial registrations) and made 5302 payments (including 90 CHSH payments).

**Eligibility:** Aged 18 and over, suffered abuse and/or neglect while in state care prior to 1 March 2006 under terms of specified legislation, or who otherwise satisfied the scheme they were placed in state care. Applicants were eligible if they had received a previous payment from any organisation involved or via criminal injuries compensation, but this was taken into account in calculating new award.

**Next of kin eligibility:** Next of kin were not eligible to apply, but an award of up to \$5,000 (often paid as funeral expenses) could be made if an applicant died before their application was assessed. For deceased applicants who had received offers, a payment equal to that level of award could be made.

**Priority groups:** The terminally ill / those likely to die before June 2011.

**Interim payments:** up to \$10k for priority groups (deducted from final award).

**Support for applicants:** Access to helpline, support groups, workshops, counselling (up to 12 sessions in a year), and family search services; support from non-government agencies with submitting applications. Support provided in accessing records and in completing application. A booklet and newsletters were produced. Assistance also provided via Office of the Public Advocate (for those with reduced capacity).

**Hearings:** No formal hearings conducted. Assessment interviews conducted on therapeutic basis.

### Application and administration

**Information required:** Application form included statement of abuse or neglect and confirmation and certified proof of identity. Applicant's statements were acknowledged as their personal experience in state care unless there was evidence to the contrary. Scheme administrators accessed various records and sources of information to substantiate details of the applicant's placement and the abuse and/or neglect. An original requirement for applicants receiving the

<sup>25</sup> Rock, M. (n.d.). *Western Australian Department for Communities. Redress WA Final Report*. Retrieved from: <https://www.childabuseroyalcommission.gov.au/sites/default/files/STAT.0243.001.0246.pdf>

<sup>26</sup> Ibid.

<sup>27</sup> See Government of Western Australia (2011).

maximum payment to have a psychological assessment to support their application was removed.

**Decision-making:** Basic details substantiated by redress staff. Application assessed as Level 1 to 4 (indicating severity of abuse) by senior redress officer. Level 1 and 2 applications then assessed by senior redress officer and approved (and amended if required) by Team Leader. Level 3 and 4 applications assessed by internal member, with more information sought if required, then passed to independent review panel for approval (or revision), with Presiding Member having final decision if panel could not agree. Decisions on incomplete or ineligible applications, or payments for deceased applicants, were made by an executive director. Claims were assessed at lower level of corroboration than in the judicial system.

**Approach to payments:** Individually assessed payment of Aus\$5,000–\$45,000 (original Aus\$80,000 maximum reduced). Claims were allocated to one of four levels based on severity of abuse, and were then assessed taking account of four elements: severity, compounding/ameliorating factors, consequential harm, and aggravating factors. Previous payments taken into account.

**Role of lawyers/other professionals:** Legal, social work, and health or allied professionals (as well as members of the public with relevant knowledge and experience of abuse in care) involved in Independent Review Panel; presiding member was legal person.

**Role of government and other parties:** State run and funded scheme.

## Australia: WA Country High School Hostels ex-Gratia Scheme

### Australia: WA Country High School Hostels ex-Gratia Scheme

**Origin/purpose:** The scheme was set up in response to the St Andrew's Hostel Katanning Report of a special inquiry undertaken by Hon. Peter Blaxell (Govt of WA, 2014). CHSH residents had not realised they were eligible to apply to the WA Redress scheme and so the new scheme was established to provide recompense to former students who were subject to abuse when boarding at a state hostel (Govt of WA, 2013).

**Elements of redress:** Ex-gratia payment; opportunity to have their experience heard; opportunity to refer cases to relevant agencies; counselling and support.

**General:** Public apology from the Premier.

**Operational overview:** The scheme was open for applications for six months (November 2012 to May 2013). There were 106 applications, and 90 payments made.

**Eligibility:** Aged 18 and over, and suffered abuse while boarding at named CHSH establishments prior to 2007. It covered abuse by employees and volunteers but not fellow boarders.

**Next of kin eligibility:** Family members / estate of deceased were not eligible to apply for payment.

**Priority groups:** Those with a terminal / life-threatening illness.

**Interim payments:** No information.

**Support for applicants:** Applicants signposted to counselling hotline; legal representation deemed not necessary and any costs incurred were borne by applicants.

### Application and administration

**Information required:** Application form included personal details and placement details, description of abuse, and confirmation of whether abuse had been reported to police. Applicants were also required to submit certified proof of identity, and any documents, where possible, that verified their placement. All applicants were contacted by telephone prior to their claims being assessed to discuss if any further information was required. Applicants' residence in state care was verified via official records but applicants were not penalised if proof could not be found.

**Decision-making:** Application verified regarding eligibility and then reviewed by assessor who carried out telephone interview. An assessment panel then determined the payment offer based on the severity of abuse suffered. Applicants' statements were acknowledged as their personal experience in state care unless there was evidence to the contrary. Claims were assessed at a lower level of corroboration than would be expected if investigated under a judicial system (Government of Western Australia, 2014).

**Approach to payments:** Individually assessed payment of Aus\$5,000–\$45,000. There were three payment levels, with individual payments determined on the basis of severity of abuse. No detailed information available



on assessment of individual claims. Previous payments were taken into account.

**Conditions:** There were no conditions for accepting a payment; scheme had no bearing on any civil damages that individuals might choose to pursue.

**Role of lawyers/other professionals:** Legal representation deemed unnecessary.

**Role of government and other parties:** State run and funded scheme.

## Republic of Ireland: Residential Institutions Redress

### Republic of Ireland: Residential Institutions Redress

**Origin/purpose:** A Commission to Inquire into Child Abuse (CICA) was established in 2000 to determine the causes, nature, circumstances and extent of abuse of children within institutions from 1940. The Residential Institutions Redress Board (RIRB) was set up under the Residential Institutions Redress Act 2002.

**Elements of redress:** Redress payment; medical expenses for past and future costs relating to the abuse; health and wellbeing, housing, learning and development services and support (also available to family); counselling and other support.

**General:** Apology from the Taoiseach (Prime Minister).

**Operational overview:** The scheme ran between 2002 and 2015, with applications accepted between Dec 2002 and Dec 2005. There were 16,649 applications received, and 15,579 awards (15,562 accepted as at Dec 2015).

**Eligibility:** Individuals who were abused as children while resident in any of 139 specified institutions. Specific criteria were that individuals were resident in named institutions while under the age of 18; were subjected to sexual, physical or emotional abuse or serious neglect while resident; and had suffered physical, psychiatric or other injury consistent with that abuse. Applicants were not eligible if they had already received a court award or a settlement for the same abuse and injuries (or a claim had been unsuccessful).

**Next of kin eligibility:** Relatives of a deceased victim/survivor could to make an application *in their own right* if the individual had died since May 1999, and proceed with already submitted claims. Relatives could also access support services.

**Priority groups/Interim payments:** Those with a life-threatening medical illness or psychiatric condition and those who were over 70 years of age were treated as priority groups and were eligible for an interim payment up to €10,000 (deducted from final award).

**Support for applicants:** Applicants had access to counselling and support (via Towards Healing).

Applicants could seek assistance from the Board in making an application. Reasonable legal and other costs and expenses incurred were covered by the scheme.

**Hearings:** could be held in various locations

### Application and administration

**Information required:** Application form included personal details and proof of identity, solicitor details, history of care experience and details of abuse (and medical information); applicants also had to provide information on previous reports to the police, civil claims and payments received. Applicants could ask Board to source information. The Board could source any further information necessary to make a decision. Named individuals/institutions were asked to provide evidence (and were given a copy of application). A hearing was held if a settlement offer was rejected. Applicants could give evidence, call witnesses, and question witnesses. Any named person or institution could take part.

**Decision-making:** For each application, the Board had to satisfy themselves of four points, relating to identity, residency within institution, experience of abuse, and injury consistent with alleged abuse – by considering available information / requesting additional information (written or oral), and then make offer using scale developed by Compensatory Advisory Committee. If rejected, a hearing was held in front of 3 Board members – this involved presentation of evidence, witnesses, questioning, etc.

**Approach to payments:** Individually assessed payment up to €300,000 plus additional redress (max 20% of award) in exceptional cases and future medical expenses not exceeding 10% of award. Payment amounts informed by sums offered by civil courts.

A points-based system was used, with points awarded across 4 criteria: severity of abuse; medically verified physical/psychiatric illness; emotional and social effects of abuse; and loss of opportunity. The points total determined the payment band, with the award decided within a set range.

**Conditions:** Applicants had to give up the right to further action against the Department and others.

**Role of lawyers/other professionals:** Legal and medical advisers involved in Redress Board. Legal advice not required by applicants, but reasonable costs covered.

**Role of government and other parties:** State run scheme with voluntary financial contributions from religious bodies as previous care providers (providers were offered indemnity against legal action in return for contributions).

## Jersey: States of Jersey Redress Scheme

### Jersey: States of Jersey Redress Scheme

**Origin/purpose:** The financial redress scheme was intended to provide an informal, private and efficient way to deliver 'fair and reasonable' compensations to victims of historic abuse suffered between 1945 and 1994 (States of Jersey, 2012b, p.4). It followed on from a police investigation into historic child abuse within various institutions in Jersey. During the course of the operation, between September 2007 and December 2010, 553 alleged offences were reported, for which eight people were prosecuted (for 145 offences) and seven convictions were secured. The Independent Jersey Care Inquiry took place after the redress scheme closed for applications; it was set up to ascertain the failings of Jersey's care provision for those who suffered abuse as children, and to provide answers for them. The final report was published in July 2017.

**Elements of redress:** Redress payment; formal apology; medical expenses; therapeutic support. **General:** Formal apology from the Chief Minister for Jersey.

**Operational overview:** The redress scheme was established in March 2012 and was administered by a law firm. Applications accepted between March and September 2012. There were 132 claims received with 125 settled (and 119 accounted for as at April 2015).

**Eligibility:** Individuals who had been in the State of Jersey's full-time residential care system at any time between 9 May 1945 and 31 December 1994 and were subjected to sexual and/or unlawful physical abuse whilst in that care. Applicants were not eligible if damages had already been awarded by court or agreed and paid in relation to abuse.

**Next of kin eligibility:** Scheme did not award financial compensation if the victim/survivor had died.

**Priority groups/Interim payments:** No information.

**Support for applicants:** Reasonable legal fees, medical expenses and other application-related costs were covered.

### Application and administration

**Information required:** Applicants had to provide personal details and proof of identity, representative contact details, details of care experience and abuse suffered, and details of previous complaints, criminal proceedings, civil claims and payments received. Applicants also had to sign a declaration of truthfulness, and agree to (i) granting access to relevant records and information, (ii) the sharing of information with relevant agencies, and with a psychiatrist, (iii) a psychiatric assessment if required, and (iv) cooperation with the scheme lawyers.

**Decision-making:** Application assessed by scheme lawyers to confirm eligibility and any additional information required. Claim then considered by scheme lawyers and Dept. of Health and Social Services, with award based on abuse suffered / harm caused using matrix involving four payment bands.

**Approach to payments:** Individually assessed payment up to £60,000 plus medical expenses up to £3,000 (other than in exceptional cases). Payment amounts informed by sums offered in civil court actions.

Claims were assessed and allocated to one of four categories: 1. Physical and/or sexual abuse; 2. Aggravated physical and/or sexual abuse; 3. Rape and/or prolonged aggravated physical and/or sexual abuse: standard bracket; 4. Rape and/or prolonged aggravated physical and/or sexual abuse: upper bracket. Payments were then decided within the range for the category of abuse. Any CICB award already made was deducted from the final scheme award.

**Conditions:** Applicants had to accept the award as full and final settlement of claim (and had to agree not to disclose the amount). Applicants who refused the award retained the right to take legal action.

**Role of lawyers/other professionals:** Scheme was administered by law firm; payment amounts based on advice of England and Wales QCs. Applicants had option of using legal representation with reasonable legal costs and expenses paid.

**Role of government and other parties:** State run and funded scheme.

## Canada: Indian Residential Schools Settlement Agreement

### Canada: Indian Residential Schools Settlement Agreement

**Origin/purpose:** Scheme was part of a broader package of reparations defined by the Indian Residential Schools Settlement Agreement (IRSSA) between former students, church providers, aboriginal communities and the Canadian Government, to deal with claims of abuse suffered by children in residential schools operated by religious organisations. There had been an earlier Alternative Disputes Resolution process, and a settlement was subsequently called for in response to the volume of applications. There were five main components of the IRSSA: Common Experience Payment (CEP), Independent Assessment Process (IAP), the Truth and Reconciliation Commission (TRC), Commemoration, and Health and Healing Services. Individuals had the chance to opt out of the IRSSA.

**Elements of redress:** Redress payment; loss of income payment; contribution to other necessary and reasonable costs; personal credits for access to education; social, psychological and medical support.

**Operational overview:** The scheme commenced in September 2007 with a September 2011 deadline for applications. 105,530 CEP applications were received with 79,309 awards made (six in progress as at 2017), there were 38,099 IAP applications and 30,557 awards.

**Eligibility:** All former students were eligible for a CEP; those who had suffered serious abuse were also eligible for an IAP payment unless they had already received payment through court or ADR process. Applicants who stayed within the settlement (i.e. they did not 'opt out') gave up their right to take legal action. Those who opted out could take legal action.

**Next of kin eligibility:** Representatives of deceased victims/survivors were eligible to receive full CEP payment if applicant had died after 30 May 2005, either where the individual had submitted the application themselves, or the representative submitted the application after the death, and could also proceed with already submitted IAP claims. Relatives were eligible for IRSSA-funded programmes.

**Priority groups/interim payments:** Advance Payment Program established for eligible applicants of 65 years or older, with sums deducted from future payments from main scheme.

**Support for applicants:** Applicants had access to counselling; legal and other necessary costs for those making IAP claims were covered via inclusion in final award (up to a maximum of 15%).

**Hearings:** Reasonable costs for support person; cultural symbols/rituals incorporated into hearings.

### Application and administration

**Information required:** CEP and IAP applications involved different processes. Applicants had to complete application form; scheme could contact individual for more information if required. IAP applications required supporting evidence from claimant and defendants; scheme adjudicators could call for additional information or expert reports. Scheme administrators sourced background information on establishments and named individuals. Claimants and other

parties were responsible for collecting information, and organising witnesses and witness statements. Hearings involved presentation of evidence, expert reports, witnesses, and questioning of witnesses.

**Decision-making:** CEP applications were verified by government researchers to confirm attendance at a recognised school. IAP applications were verified by administrators, who sought more information if necessary. IAP cases were passed to adjudicator for preliminary hearing prior to full hearing. Adjudicators oversaw hearing, eliciting full story, testing evidence, questioning witnesses and determining award based on payment matrix. Process overseen by oversight committee. Standard track cases could be resolved without hearing – parties could request adjudicator assistance with this.

**Approach to payments:** CEP – C\$10,000 for first school year (or part year) plus C\$3,000 for each additional year or part year / IAP payment of between C\$5,000 and C\$275,000 plus loss of income payment up to C\$250,000 plus contribution for other costs up to 15% of award. Loss of income payments informed by sums offered in civil courts. Scheme used a points-based system with points awarded across 5 criteria: 1 acts proven; 2 consequential harm; 3 aggravating factors; 4 future care needs; 5 consequential loss of opportunity (or award for 'proven actual income loss'). The total points determined the payment band, with the award decided within the set range.

**Role of lawyers/other professionals:** Legal professionals were not part of the decision-making; instead they represented clients during the process – not essential but advised for IAP claims.

**Role of government and other parties:** State run scheme with financial contribution to redress payments from church bodies as previous care providers.

## Canada: Nova Scotia Compensation Program

### Canada: Nova Scotia Compensation Program

**Origin/purpose:** The scheme was developed following accusations of physical and sexual abuse in provincial institutions. It was preceded by the 1994 Samuels-Stewart Audit which reviewed the practices and policies in two institutions, and the 1995 Stratton investigation which identified abuse at three institutions (state run, but two of which were originally church run). The redress scheme was then implemented concurrently with a formal investigation into the allegations of abuse.

**Elements of redress:** Redress payment; individual apology letter from the Minister of Justice; counselling payment; list of government services available to claimants; an independent record of survivor testimonials. **General:** Public apology issued by the Minister of Justice.

**Operational overview:** The scheme came into effect in June 1996. It was managed by the Department of Justice and ran over three phases between May 1996 and March 2000. There were 1487 notices of claims, 1246 'demands' and 1101 payments made.

**Eligibility:** The scheme covered those who had suffered abuse at three institutions identified in the Stratton Report. Those who had been offered compensation through the courts were eligible to apply to the scheme (but the account taken of any previous payments is not clear).

**Next of kin eligibility:** No information.

**Priority groups/Interim payments:** Claims naming currently employed staff as perpetrators of abuse were given priority in the Internal Investigation Unit investigations, but not in the processing of the claims.

**Support for applicants:** Applicants had access to counselling and were signposted to drug addiction services. Legal fees (capped) and other expenses covered.

### Application and administration

**Information required:** Applicants had to provide details of the abuse experienced, and details of the payment sought, with basic details confirmed via records provided by Internal Investigation Unit (provision for requesting a further statement to the scheme was introduced in Phase 3). During the first and second phase of the scheme, applicants had the option to appear personally or by videotape, audiotape or telephone before the file reviewer. This option was subsequently removed for the majority of cases. After Phase 1, voluntary polygraph tests were introduced for the accused employees and the claimants.

**Decision-making:** Basic details confirmed via official records. Claims were investigated separately, both by the Internal Investigations Unit and file assessors. For eligible claims, file assessor makes response and offer using a matrix based on type/severity of claim. If the offer was rejected, the claimants could negotiate the compensation with the assessor. If the compensation was not agreed, it could be referred to the file reviewer to make a final decision on the compensation amount.



**Approach to payments:** Individually assessed payment up to C\$120,000 plus counselling payment - C\$5,000 / C\$7,500 / C\$10,000. Payment amounts were informed by compensation schemes in other jurisdictions.

Claims were allocated to a category based on the type and severity of abuse – from category 1: severe sexual and severe physical to category 12: minor physical and/or sexual interference – with the award decided within the set range for the category of abuse. The award payments were deemed not to be considered income for the purposes of determining family benefits or social assistance.

**Conditions:** Applicants had to give up their right to sue the Province or the individuals responsible for administering the institutions, but retained the right to sue individual employee accused of committing abuse.

**Role of lawyers/other professionals:** File reviewers were lawyers; legal expenses were paid for claimants (up to a limit).

**Role of government and other parties:** State run and funded scheme.

## Canada: Grandview Agreement

### Canada: Grandview Agreement

**Origin/purpose:** The scheme was established in 1996 following police investigations and criminal proceedings into abuse at Grandview Training School for Girls in the 1960s/70s which came to light in the 1990s. The scheme was the result of pressure from the Grandview Survivors Support Group (GSSG) which formed to seek options for victims through a non-court based approach, and represented an agreement between the Ontario Government and the GSSG. The scheme included group benefits, individual benefits and general benefits.

**Elements of redress:** Group benefits (for all former wards during this time): general acknowledgement; crisis line; tattoo/scar reduction. Individual benefits (for any former ward whose application was validated by an adjudicator): Redress payment; individual acknowledgement from the Government; assistance/support for vocational / educational training / upgrading; payments for major/exceptional medical/dental expenses; financial services; counselling/therapy; contingency fund payment to cover expenses not covered by other benefits.

**Operational overview:** The scheme was established in 1996 and run by the Ministry of Justice. Applications were accepted for 12 months after ratification; this was subsequently extended for another 10 months. There were 329 claims with 'around 320' being validated.

**Eligibility:** Any former ward at Grandview.

**Next of kin eligibility:** No information.

**Priority groups/Interim payments:** No information.

**Support for applicants:** Applicants had access to therapy/counselling; there was a helpline, plus additional support such as tattoo/scar removal/reduction for all former residents.

Legal expenses of applicants pursuing individual claims were covered (but capped).

**Hearing:** These were held in various locations, and were intended to be informal, and non-confrontational.

### Application and administration

**Information required:** Entitlement to group benefits was based on proof that applicant was resident at Grandview during the specified time period.

Application form required a description of abuse and injuries, along with Crown ward files (accessed on behalf of the applicant), transcripts of police interviews and other supporting evidence. Applicant had to provide a sworn statement of the truth and a statement releasing the state from further liability, and declaration of receiving independent legal advice. Applicants were entitled to an oral hearing before an adjudicator. Hearings were held at locations suitable for the applicant and lasted around half a day. Applicants could have legal representation at hearings.

**Decision-making:** Eligibility and Implementation Committee reviewed the initial application to ensure eligibility and to confirm whether application could proceed to hearing for individual benefits, or whether entitlement was to group

benefits only. Relevant applications then submitted to adjudicator for oral hearing and determination of award using payment matrix, and completion of template to record decision. Each decision reviewed by second adjudicator to ensure consistency, and whole adjudication panel could be asked to review decision.

**Approach to payments:** individually assessed payment of C\$3,000–\$60,000 plus payment for other expenses up to C\$3,000. Claims were allocated to one of four categories based on alleged abuse and level of harm or injury, with awards then decided within available payment range linked to each category. Applicants had to provide information on any previous/current claim they had made against the government for damages arising from their time at Grandview (but the account taken of any previous payments is not clear).

**Conditions:** Applicants had to release the government from any further liability, but could take action against individuals.

**Role of lawyers/other professionals:** Legal advice mandatory prior to submitting application; modest funding provided for legal services.

**Role of government and other parties:** State run and funded scheme.

## Sweden: Swedish Redress Scheme

### Sweden: Swedish Redress Scheme

**Origin/purpose:** The scheme was intended to provide redress for those who had been abused in care (institutions and foster care). An initial inquiry was established following a TV documentary which brought historical abuse to light; a further wider inquiry was then established, as well as a Restitution Commission which considered redress options. A redress scheme was set up (via the Financial Redress Act 2012) offering ex-gratia payments for those most severely affected.

**Elements of redress:** Redress payment; psychological support on a case-by-case basis.

**General:** Public apology from the Speaker of the Parliament;

**Operational overview:** The redress scheme opened in Jan 2013 with applications accepted up to Dec 2014. There were 5285 applications and 2211 awards.

**Eligibility:** Individuals who had been severely affected by abuse in state care. Various exclusions included privately placed children, Finnish war evacuees, those abused after 1980, and children who were not admitted under child protection laws.

**Next of kin eligibility:** Compensation was non-transferable – if an applicant died prior to their claim being decided, the claim ended, but already decided awards could be paid out to an individual's estate.

**Priority groups/Interim payments:** No information.

**Support for applicants:** Psychological support was offered to applicants on a case-by-case basis.

Assistance provided in accessing claimants' records.

Expenses for attending the hearing could be covered on discretionary basis; witness expenses covered unless deemed irrelevant by the Financial Redress Board (FRB). Applicants did not have access to legal assistance.

**Hearings:** Applicants were entitled to bring a support person along to the oral hearings.

### Application and administration

**Information required:** Application forms were accompanied by a written submission, and any available records (accessed with Board support). Archival material was used to validate the applicants' eligibility and their pathway through care, and to identifying indisputable medical evidence or police records/court decisions that would make formal hearing unnecessary. The application was followed by a formal hearing at which the FRB could ask questions of the claimant. Oral testimony could be provided in person, audio, or in video, and claimants could summon witnesses.

**Decision-making:** Eligibility validated by FRB staff. Cases were prepared by FRB investigators and administrative staff, and then examined by FRB commissioners – a formal oral hearing was then carried out chaired by judge, with three or four FRB commissioners who assessed for credibility/severity and made flat rate offer.

**Approach to payments:** Flat rate payment of SEK250,000 for those whose abuse was deemed 'severe'. Payment amounts informed by sums offered in civil courts; previous awards not taken into account; tax free; did not affect various state benefits.

**Role of lawyers/other professionals:** Legal professionals acted as case investigators and FRB commissioners; claimants had no access to legal assistance.

**Role of government and other parties:** State run and funded scheme.

## APPENDIX 2: References

This section provides a full list of references for the sources used in preparing the individual summary research papers on which this descriptive overview is based. Readers wishing to find out more about any of the redress schemes discussed in this paper can refer to any of the original sources listed here.

The references are presented on a scheme-by-scheme basis.

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